

**LOVELAND CITY COUNCIL MEETING  
TUESDAY, AUGUST 21, 2012  
CITY COUNCIL CHAMBERS  
500 EAST THIRD STREET  
LOVELAND, COLORADO**

**THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMMODATION TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2343 OR TDD # 962-2620 AS FAR IN ADVANCE AS POSSIBLE.**

**5:30 P.M.                   DINNER - City Manager's Conference Room  
6:30 P.M.                   REGULAR MEETING - City Council Chambers**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PRESENTATION OF LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) GOLD CERTIFICATION AWARD**

*Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.*

*Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.*

*Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.*

**CONSENT AGENDA**

1.    **CITY CLERK**  
      **APPROVAL OF COUNCIL MINUTES**  
      **Consideration of a motion approving Council minutes**  
      This is an administrative action to approve Council minutes from the July 24, 2012 study session.
  
2.    **CITY MANAGER**  
      **APPOINTMENTS TO BOARDS & COMMISSIONS**

**Consideration of a motion appointing and reappointing members to various boards and commissions**

This is an administrative action to consider the following appointments:

Fire and Rescue Advisory Commission: Dave Adams is recommended for appointment for a term effective until June 30, 2015.

Historic Preservation Commission: Janelle Armentrout is recommended for a partial term effective until June 30, 2014.

Senior Advisory Board: Angie Sawtelle is recommended for a partial term effective until December 31, 2012 and Richard Hedland is recommended for a partial term effective until December 31, 2013.

Visual Arts Commission: Greg Hoff is recommended for a partial term effective until December 31, 2012.

**3. DEVELOPMENT SERVICES**

**DRAINAGE AND UTILITY EASEMENT VACATION - ALFORD LAKES FIRST SUBDIVISION**

**Consideration on second reading of an ordinance vacating a portion of a drainage and utility easement on Lot 39, Block 1, Alford Lakes First Subdivision, City of Loveland**

A legislative action to consider the second reading of an ordinance to approve a request to vacate a 122.5 square foot portion of a drainage and utility easement in the Alford Lake First Subdivision, located at 5285 Crabapple Court. City Council unanimously adopted the ordinance on first reading on August 7, 2012.

**4. DEVELOPMENT SERVICES**

**PUBLIC HEARING**

**RIGHT-OF-WAY EASEMENT VACATION – HARLOW ADDITION (FIRST BANK BUILDING)**

**Consideration on first reading of an ordinance vacating a portion of a public right-of-way adjacent to Lot 1, Harlow Addition, City of Loveland, Larimer County, Colorado**

This is a public hearing to consider a legislative action to vacate a portion of a public right-of-way in the Harlow Addition to the City of Loveland. The applicant is First Bank. Conditions recommended by the Planning Commission on July 23, 2012 have been incorporated into the ordinance.

**5. DEVELOPMENT SERVICES**

**PUBLIC HEARING**

**ANNUAL ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT**

**Consideration of Resolution #R-54-2012 of the City Council of the City of Loveland, Colorado approving a Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013**

This is a public hearing to consider an administrative action to adopt a resolution approving the 2012-2013 Community Development Block Grant (CDBG) Annual Action Plan. Approval of the plan will allow the City to receive and distribute CDBG funds.

**6. CITY CLERK**

**AGREEMENT FOR COORDINATED ELECTION IN NOVEMBER 2012**

**Consideration of Resolution #R-55-2012 approving and authorizing the execution of an Intergovernmental Agreement between the City of Loveland and the Larimer**

**County Clerk and Recorder concerning the coordinated general election to be held on November 6, 2012**

This is an administrative action. City Council called a special election for November 6, 2012, to fill a vacant seat in Ward IV. This election shall be held as a coordinated election with Larimer County. This resolution approves the Election Agreement between the City and Larimer County.

**7. PUBLIC WORKS**

**AMEND LEASE OF CITY PROPERTY (GOOD TIMES)**

**Consideration of Resolution #R-56-2012 approving an assignment and amendment of a lease for real property owned by the City of Loveland and located at 1355 N. Lincoln Avenue in Loveland, Colorado**

This is an administrative action to consider the adoption of a resolution approving an assignment and amendment of an existing lease agreement between the City of Loveland (City) and Good Times Drive Thru Inc. for the real property owned by the City in the southwest corner of the intersection of North Lincoln Avenue and East Eisenhower Boulevard (1355 N. Lincoln Avenue). The resolution also authorizes the City Manager to execute the Amendment on behalf of the City.

**8. PUBLIC WORKS / PARKS & RECREATION**

**AGREEMENT FOR NEW BRIDGE AND RECREATION TRAIL UNDERPASS (MADISON AVENUE)**

**Consideration of Resolution #R-57-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Department of Transportation, for design and construction of a new bridge and recreation trail underpass at the intersection of Madison Avenue and the Chubbuck Ditch**

This is an administrative action. The resolution authorizes the City Manager to execute a grant agreement with the State of Colorado. This grant will partially fund the replacement of the bridge on Madison Avenue at the Chubbuck Ditch.

**9. ECONOMIC DEVELOPMENT**

**GRANT AWARDS FOR REMEDIATION & DEMOLITION AT 301 & 319 N. LINCOLN**

**Consideration of Resolution #R-58-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Brownfields Revolving Loan Fund, acting by and through the Colorado Housing and Finance Authority, for a grant to partially fund the removal of environmental hazards located at 301 and 319 N. Lincoln**

This is an administrative action. The resolution would approve an Intergovernmental Agreement (IGA) with the Colorado Brownfields Revolving Loan Fund so that the City can receive \$313,000 in grant funds for the environmental cleanup of 301 and 319 N. Lincoln Avenue. There are two sub-grant agreements because \$213,000 are federal funds from the American Recovery and Reinvestment Act of 2009 (ARRA) and \$100,000 are from the federal Brownfields Initiative.

**10. LEGAL**

**AGREEMENT WITH PRPA FOR EXCHANGE OF LEGAL SERVICES**

**Consideration of Resolution #R-59-2012 approving an Intergovernmental Agreement between the City of Loveland and Platte River Power Authority for the exchange of legal services**

This is an administrative action to approve an intergovernmental agreement that will authorize the sharing of legal services between the City of Loveland and Platte River Power Authority (PRPA) when conflicts arise that prevent the City Attorney's Office or PRPA legal counsel from representing the interests of their clients.

## **END OF CONSENT AGENDA**

## **CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

### **CITY COUNCIL**

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*
- c. **City Manager Report**
- d. **City Attorney Report**

### **PROCEDURAL INFORMATION**

*Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.*

## **REGULAR AGENDA**

### **CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

11. **CITY CLERK**  
**APPROVAL OF COUNCIL MINUTES**  
**Consideration of a motion approving Council minutes**  
 This is an administrative action to approve Council minutes from the August 7, 2012 regular meeting. Not all Councilors were present.
12. **DEVELOPMENT SERVICES**  
**STATEMENT OF DIRECTION FOR OIL & GAS EXPLORATION REGULATIONS**  
**Consideration of a motion approving the Statement of Direction for the development of regulations on oil and gas development in the City of Loveland**  
 City staff is seeking directions from City Council on how to proceed with the development of regulations on oil and gas development in the City. City staff has also provided a memorandum presenting the results of the City Council Questionnaire on Oil and Gas Development. The City Attorney has provided a memorandum analyzing the City of Greeley's oil and gas regulations as compared to the City of Longmont's, some of which are now being challenged in the courts by the Colorado Oil and Gas Conservation Commission. Attached to his memorandum are Greeley's regulations as found in its code at Chapter 18.56 and a copy of the Commission's complaint filed in its lawsuit against the City of Longmont.

13. **ECONOMIC DEVELOPMENT**  
**LOVELAND CENTER FOR BUSINESS DEVELOPMENT**

This is an information only item. The City of Loveland has provided financial support for small business development and entrepreneurship training since the early 1990's. The City has received a budget request from the Loveland Center for Business Development (LCBD) for an increase of \$80,000.00 in 2013. The City's current contribution is \$130,000.00. This discussion is intended to provide Council with information and give staff direction on this request and possible contract provisions.

**ADJOURN**

City Council Study Session  
July 24, 2012  
Page 1 of 1

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Farley, Fogle, Taylor, Trenary, Klassen, McKean and Shaffer. Assistant City Manager Rod Wensing was also present along with members of the City's management team.

Fire Chief Randy Mirowski made a special presentation to Lt. Pat Mialy for her incredible work on receiving four grants valued at \$2 million. A gift of a Loveland Fire & Rescue Authority Tapestry was presented to her in honor of her individual effort and commitment to receive the grants.

1. City Manager  
Emergency and Disaster Considerations for Executives training course  
Lt. Pat Mialy, Loveland Fire & Rescue Authority introduced this item to Council. Lori Hodges from the State of Colorado Emergency Management led a two hour training course covering Modules I and II, including the basics of the Incident Command System, the National Incident Management System, and the roles and responsibilities of the City Council, City Administration, and members of the Management Team during an emergency or disaster.

Having no further business to come before Council, the July 24, 2012 Study Session was adjourned at 8:40 p.m.

Respectfully Submitted,

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Jeannie M. Weaver, Deputy City Clerk

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Cecil A. Gutierrez, Mayor



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** City Manager's Office  
**PRESENTER:** Bill Cahill

**TITLE:**

Appointments to boards and commissions

**RECOMMENDED CITY COUNCIL ACTION:**

Motion to appoint Dave Adams as a City Commission member on the Fire and Rescue Advisory Commission for a term effective until June 30, 2015

Motion to appoint Janelle Armentrout to the Historic Preservation Commission for a partial term effective until June 30, 2014

Motion to appoint Angie Sawtelle to the Senior Advisory Board for a partial term effective until December 31, 2012 and to appoint Richard Hedland to the Senior Advisory Board for a partial term effective until December 31, 2013

Motion to appoint Greg Hoff to the Visual Arts Commission for a partial term effective until December 31, 2012

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action

**DESCRIPTION:**

This is an administrative item recommending the appointment of members to the Fire and Rescue Advisory Commission, Historic Preservation Commission, Visual Arts Commission and the Senior Advisory Board.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

After interviews, Dave Adams is recommended for appointment as a City Commission member on the **Fire and Rescue Advisory Commission** for a term effective until June 30, 2015. The Loveland Rural Fire Protection District board of directors has appointed William Tillman as a Rural Commission member. Two City Commission vacancies and one Rural Commission vacancy still remain and recruiting continues for those vacancies.

Cara Scohy resigned from the **Historic Preservation Commission** in April. The interview committee recommends the appointment of Janelle Armentrout to the commission for a partial term effective until June 30, 2014. A full term vacancy is still vacant and recruiting continues for that position.

Josh Emrich resigned from the **Visual Arts Commission** in July. The commission recommends the appointment of Greg Hoff, who was appointed as an Alternate member January 3, 2012, to a partial term effective until December 31, 2012.

Two members recently resigned from the **Senior Advisory Board**. The interview committee recommends the appointment of Angie Sawtelle, appointed as an Alternate member January 3, 2012, to a partial term effective until December 31, 2012. Also recommended for appointment is Richard Hedlund, appointed as an Alternate member on January 3, to a partial term effective until December 31, 2013.

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REVIEWED BY CITY MANAGER:



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LIST OF ATTACHMENTS:

None



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 3  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**PRESENTER:** Noreen Smyth, Current Planning

**TITLE:**

An ordinance vacating a portion of a drainage and utility easement on Lot 39, Block 1, of the Alford Lake First Subdivision, City of Loveland, Larimer County, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt on second reading an ordinance vacating a portion of a drainage and utility easement located on Lot 39, Block 1, of the Alford Lake First Subdivision, City of Loveland, Larimer County, Colorado.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adoption a motion continuing the item to a future Council meeting

**DESCRIPTION:**

A legislative action to consider the second reading of an ordinance to approve a request to vacate a 122.5 square foot portion of a drainage and utility easement in the Alford Lake First Subdivision, located at 5285 Crabapple Court.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

A portion of an existing drainage and utility easement is proposed for vacation due to an error made in the placement of the foundation of a recently built single family house located on Lot 39, Block 1, of Alford Lake First Subdivision. It is only a small portion of the front corner of the structure that encroaches into the 5 foot wide easement (see Attachment 2 in the Council

memorandum). The total area of the vacation would be 122.5 square feet (3.5 feet by 35 feet). The vacation of the easement would not impact drainage on this lot or adjacent lots. There are no utilities within the portion of the easement to be vacated.

Following a noticed public hearing on June 26<sup>th</sup>, an associated side yard setback variance was approved by the Zoning Board of Adjustment hearing officer, conditioned upon approval of this vacation by City Council. The setback variance of 3.5 feet was required to accommodate encroachment of the house into required 5-foot-wide setback. The easement vacation, if approved by Council, will complete this process and allow the house to remain in its existing location. Staff is in support of this application.

The ordinance was adopted on first reading on the Consent Agenda at the August 7<sup>th</sup> Council meeting.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff memo

**FIRST READING: August 7, 2012**

**SECOND READING: August 21, 2012**

**ORDINANCE NO.**

**AN ORDINANCE VACATING A PORTION OF A DRAINAGE AND UTILITY EASEMENT ON LOT 39, BLOCK 1, ALFORD LAKES FIRST SUBDIVISION, CITY OF LOVELAND**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of a portion of the drainage and utility easement described and depicted on **Exhibit A** attached hereto and incorporated herein by this reference, located in Lot 39, Block 1, Alford Lakes Subdivision, City of Loveland, County of Larimer, State of Colorado;

**WHEREAS**, the City Council finds and determines that no land adjoining the portion of the easement to be vacated is left without an established public or private easement connecting said land with another established public or private easement; and

**WHEREAS**, the City Council finds and determines that the portion of the drainage and utility easement to be vacated is no longer necessary for the public use and convenience; and

**WHEREAS**, the City Council further finds and determines that the application filed with the Current Planning Division was signed by the owners of more than 50% of property abutting the easement to be vacated.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby adopts and makes the findings set forth above.

**Section 2.** That based on the City Council's findings described above, the following portion of the drainage and utility easement be and the same is hereby vacated:

**That portion of a drainage and utility easement located on **Lot 39, Block 1, A, Alford Lakes Subdivision, City of Loveland, County of Larimer, State of Colorado described on Exhibit A attached hereto and incorporated herein by this reference,****

containing 122.5 square feet more or less.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 4.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this 17<sup>th</sup> day of August, 2012.

ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

# EXHIBIT A

## INTERMILL LAND SURVEYING, INC.

1301 North Cleveland Avenue – Loveland, Colorado 80537

P: 970-669-0516 – F: 970-635-9775

E: intermill@qwestoffice.net

P-12-7131

April 9, 2012

### PROPERTY DESCRIPTION FOR A PROPOSED EASEMENT VACATION BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

That portion of Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the Southeasterly line of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION as bearing North 64°47'30" East and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION; thence along the Southeasterly line of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION North 64°47'30" East 42.00 feet; thence departing said Southeasterly line of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION North 25°12'30" West 1.50 feet to the TRUE POINT OF BEGINNING; thence continuing North 25°12'30" West 3.50 feet, more or less, to a point on the Northwesterly line of an existing Drainage and Utility Easement; thence along said Northwesterly line of an existing Drainage and Utility Easement North 64°47'30" East 35.00 feet; thence departing said Northwesterly line of an existing Drainage and Utility Easement South 25°12'30" East 3.50 feet; thence South 64°47'30" West 35.00 feet to the TRUE POINT OF BEGINNING.

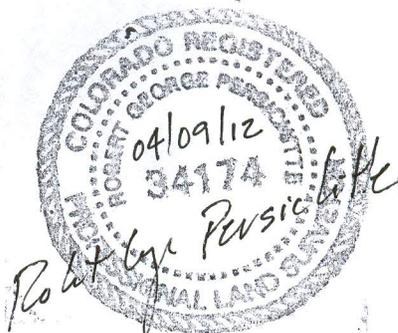
Containing 122.5 Square Feet, more or less.

PREPARED BY AND ON BEHALF OF:

INTERMILL LAND SURVEYING, INC.  
1301 North Cleveland Avenue  
Loveland, Colorado 80537  
P: 970-669-0516  
F: 970-635-9775  
E: intermill@qwestoffice.net

Robert George Persichitte  
Colorado PLS 34174

Date: 04/09/2012



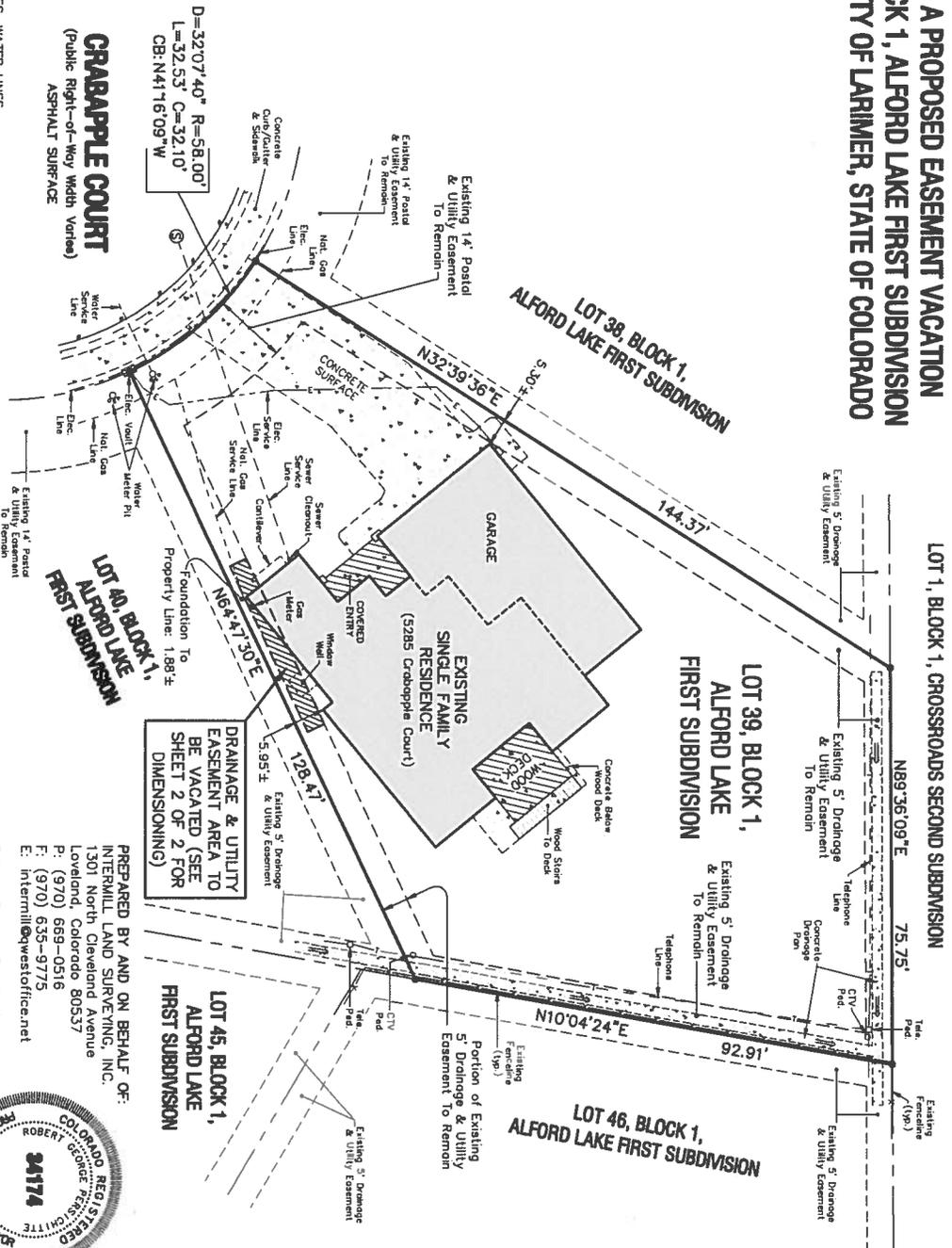
**EXISTING CONDITIONS MAP FOR A PROPOSED EASEMENT VACATION  
BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION  
TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO**



Date of Initial Preparation: April 4, 2012  
STATEMENT OF LINEAR UNITS USED:  
Linear Units Used for this survey - U.S. Survey Feet.

PREPARED FOR:  
DENNIS ROBBINS CARPENTRY, INC.  
Attn: Dennis Robbins  
28942 Weld County Road 15  
Windsor, Colorado 80550  
P: (970) 556-4111

NOTE: CERTAIN UTILITY LOCATIONS (SANITARY SEWER LINES, WATER LINES, STORM SEWER LINES) ARE SHOWN IN THEIR APPROXIMATE LOCATION(S). THE LOCATIONS FOR THESE UTILITY LINES SHOWN PER THE CITY OF LOVELAND DEPARTMENT OF WATER AND POWER UTILITY MAP BOOK. TRUE FIELD LOCATIONS FOR THESE UTILITY LINES SHOULD BE FIELD VERIFIED PRIOR TO ANY CONSTRUCTION WITHIN THE GENERAL AREA OF THESE UTILITY LINES.  
UTILITY NOTIFICATION CENTER OF COLORADO: 1-800-922-1987



NOTE: Above ground and underground utility locates, as shown on this map, were obtained by the client and field located by InterMill Land Surveying, Inc. for the preparation of this survey. Field locates of utilities performed on April 6, 2012.

PREPARED BY AND ON BEHALF OF:  
INTERMILL LAND SURVEYING, INC.  
1301 North Cleveland Avenue  
Loveland, Colorado 80537  
P: (970) 689-0516  
F: (970) 635-9775  
E: [intermill@westofcnet.net](mailto:intermill@westofcnet.net)  
Robert George Parsichlitz  
Colorado P.L.S. 34174





## Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537  
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
www.cityofloveland.org

### MEMORANDUM

**TO:** City Council

**FROM:** Noreen Smyth, Current Planning Division

**DATE:** July 20, 2012

**SUBJECT:** Vacation of a drainage and utility easement at 5285 Crabapple Court  
PZ#12-00066

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#### I. ATTACHMENTS

1. Vicinity Map and Aerial
2. Vacation Exhibit Map
3. Application for Easement Vacation
4. Letter from Applicant
5. Engineer's drainage statement

#### II. KEY ISSUES

Staff believes that there are no outstanding issues regarding the requested easement vacation.

#### III. PROJECT DESCRIPTION

This applicant proposes to vacate an approximate 3.5 foot by 35 foot portion of a side yard drainage and utility easement at 5285 Crabapple Court (as shown on **Attachment 2**). The vacation request is accompanied by and contingent upon a side yard variance request (PZ# 12-00067). The easement vacation and associated side yard variance are being requested to accommodate a recently constructed single family residence that was situated in a manner that encroaches into the easement and side yard.

## Background

As illustrated in the attached Vacation Exhibit, the subject property is Lot 39 of Block 1 of Alford Lake First Subdivision. The property to the south is Lot 40. The lots behind (to the east of) these lots are Lot 46 and Lot 45. The dividing line between Lots 45 and 46 does not line up with the dividing line between the subject property and Lot 40; the side lot line of the properties to the rear is located approximately 10 feet farther south. When situating the foundation of the house, the builder measured the subject property's south side lot line from the pin demarcating the rear corner (side lot line) of Lots 45 and 46 rather than the pin demarcating that of Lots 39 (the subject property) and 40. Thus, the builder believed the side lot line to be located farther to the south than it actually is. City staff discovered the encroachment into the side yard and easement when conducting the building permit inspection.

On staff's recommendation, the applicant spoke with the owner of the vacant lot to the south about potentially purchasing a portion of his property or otherwise altering the intervening lot line in a manner that would provide additional side yard to the subject property and eliminate the need to seek relief of the side yard requirement. The neighbors were not able to come to an agreement on this, and the lot line was not changed. It should be noted, however, that pursuing the easement vacation would be necessary regardless of whether the need for a side yard variance had been eliminated through a lot line adjustment.

## Staff Review of Easement Vacation

As indicated in the Findings and Analysis below, the drainage and utility easement to be vacated is no longer used to convey stormwater and does not impact the existing water and wastewater utility configuration within the subdivision. It is not needed for public use. The adjacent lot to the south should not be affected by the proposed easement vacation. City development review staff support the vacation request.

## Variance

The Zoning Board of Adjustment conducting a hearing on the requested 3.5 foot variance to the side yard setback on June 26, 2012. Staff received a letter of opposition to the request in advance of the hearing from the neighbor to the south. The neighbor expressed concern that his property value may be diminished by having a neighboring house situated closer to his property line than would normally be allowed. The neighbor was not able to attend the ZBA hearing in person, and no other objectors spoke at the hearing or sent letters to the City. The hearing officer was informed of the letter of objection from the neighbor to the south. On considering the evidence presented at the hearing, the hearing officer ruled to approve the variance on July 6, 2012. No appeal of the ruling was filed.

## **IV. FINDINGS and ANALYSIS**

The following two findings must be met in order for the City Council to vacate the drainage and utility easement. These findings are included in section 16.36.010.B of the Loveland City Code.

1. *That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

**Current Planning:** Staff believes this finding can be met because the drainage and utility easement vacation is internal to the property and does not affect any access to/from the property or adjacent properties. The proposed vacation of the drainage and utility easement does not involve the vacation of any existing public street or alley rights-of-way. No land will be left without an established public or private right-of-way or easement connection as a result of this easement vacation.

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

**Transportation:** Since this vacation is for a drainage and utility easement only, and does not include any existing alley or street rights of way, the vacation of the easement has no bearing on the existing public use and convenience in regards to access.

**Fire:** Staff believes the proposed easement is not needed for fire protection and can support the vacation.

**Power:** No concerns.

**Water/Wastewater:** The subject area to be vacated is within the City's current service area for both water and wastewater. Staff finds that the existing easement to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development. The existing easement to be vacated is no longer necessary for public use and convenience.

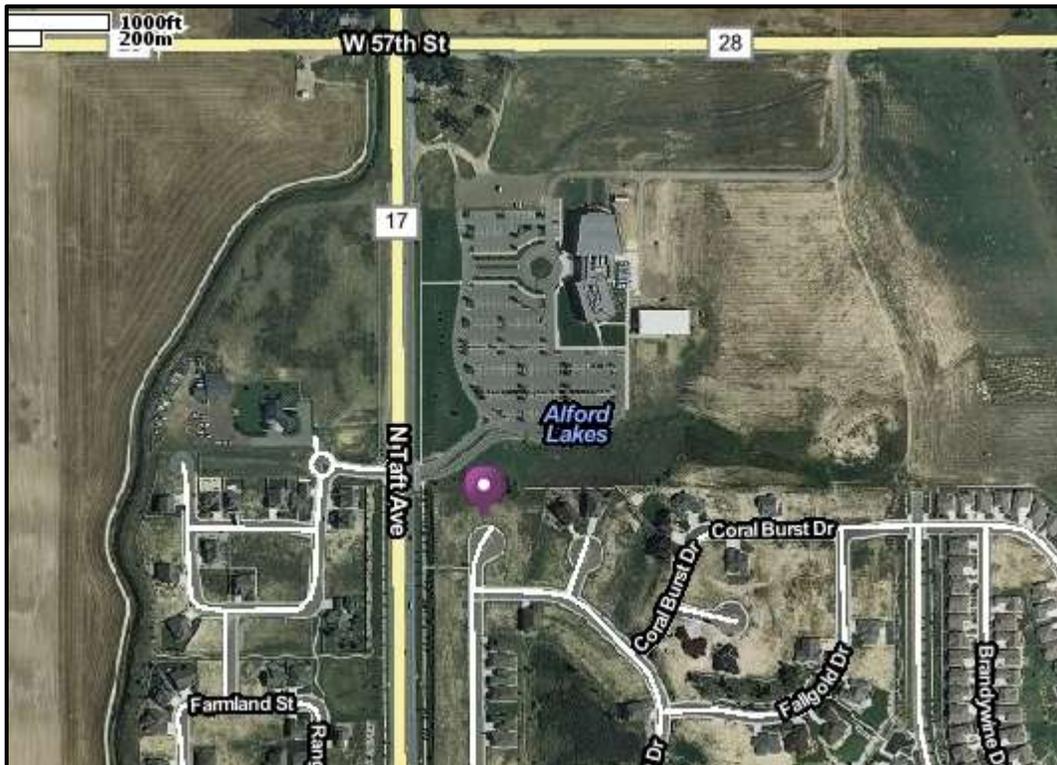
**Stormwater:** The easement to be vacated is not used to convey stormwater and thus is not necessary for the public use and conveyance of stormwater.

## **V. RECOMMENDATION**

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council approve the vacation ordinance.

# VICINITY MAP AND AERIAL

## 5285 Crabapple Court



# EASEMENT VACATION MAP

BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

PREPARED BY AND ON BEHALF OF:  
INTERMILL LAND SURVEYING, INC.  
1301 North Cleveland Avenue  
Loveland, Colorado 80537  
P: (970) 669-0516  
F: (970) 635-9775  
E: intermill@westoffice.net



Robert George Persichitte  
Colorado P.L.S. 34174  
Project No.: P-12-7131

PREPARED FOR:  
DENNIS ROBBINS CARPENTRY, INC.  
Attn: Denny Robbins  
28942 Weld County Road 15  
Windsor, Colorado 80550  
P: (970) 566-4111

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

UTILITY NOTIFICATION CENTER OF COLORADO: 1-800-922-1987

INTERMILL LAND SURVEYING, INC.  
1301 NORTH CLEVELAND AVENUE  
LOVELAND, COLORADO 80537  
BUS: (970)-669-0516 / FAX (970)-635-9775

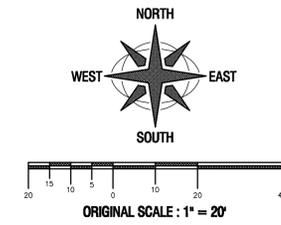
CLIENT: DENNIS ROBBINS CARPENTRY, INC.

TITLE: EASEMENT VACATION EXHIBIT MAP  
LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION, LOVELAND, COLORADO

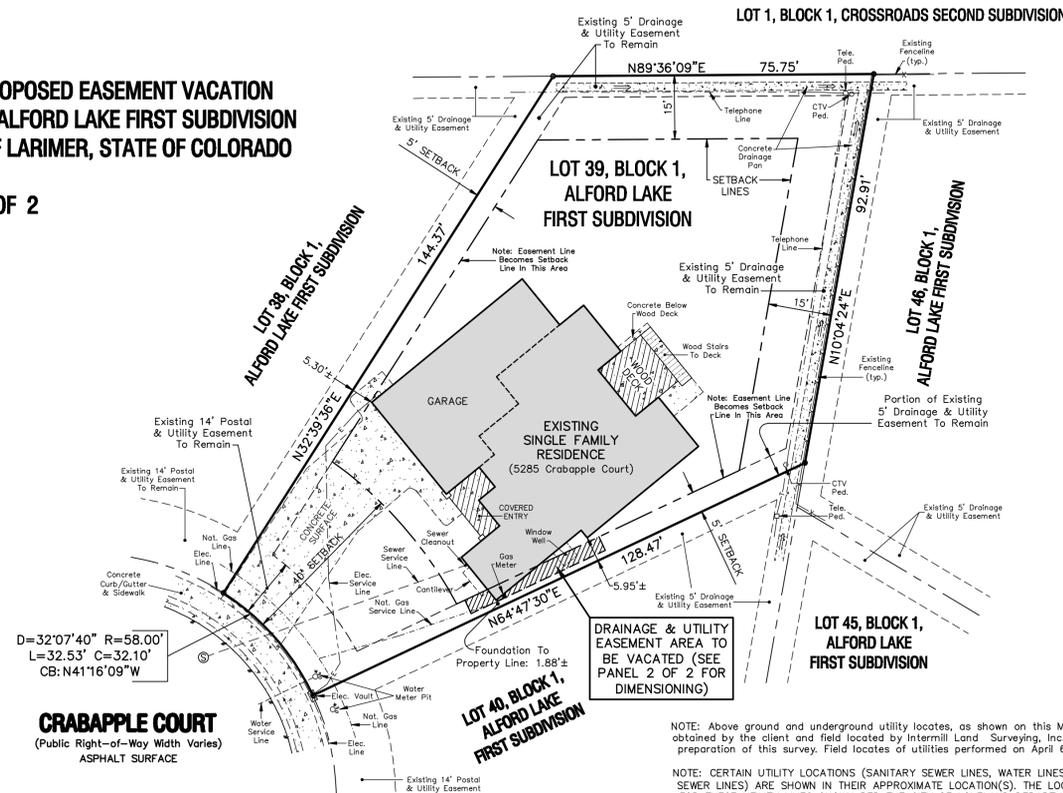
DRAWN BY:	RGF
CHECKED BY:	
APPROVED BY:	
DATE:	04-04-2012
SCALE:	1"=20'
PROJECT NO.	P-12-7131
SHEET	OF
1	1

## EXISTING CONDITIONS MAP FOR A PROPOSED EASEMENT VACATION BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

PANEL 1 OF 2

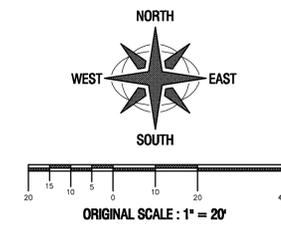


Date of Initial Preparation: April 4, 2012  
STATEMENT OF LINEAR UNITS USED:  
Linear Units Used for this survey - U.S. Survey Feet.

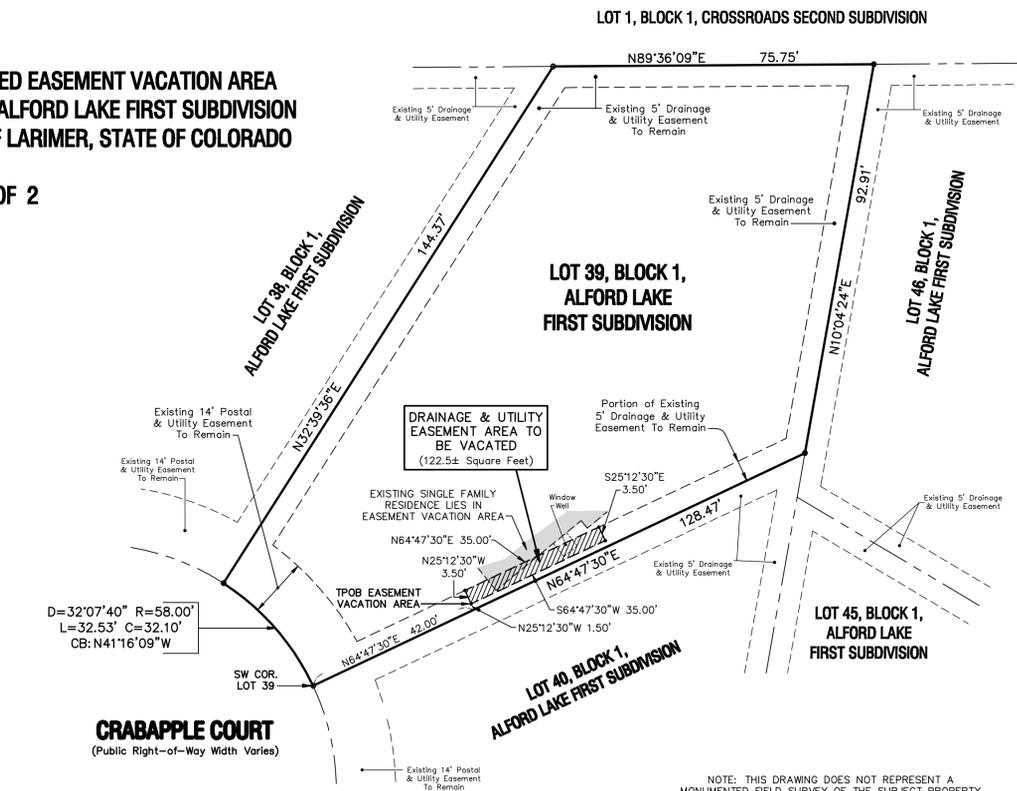


## EXHIBIT MAP DEPICTING THE PROPOSED EASEMENT VACATION AREA BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

PANEL 2 OF 2



Date of Initial Preparation: April 4, 2012  
STATEMENT OF LINEAR UNITS USED:  
Linear Units Used for this survey - U.S. Survey Feet.



PROPERTY DESCRIPTION FOR A PROPOSED EASEMENT VACATION BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

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Beginning at the Southwest corner of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION; thence along the Southeasterly line of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION North 64°47'30" East 42.00 feet; thence departing said Southeasterly line of said Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION North 25°12'30" West 1.50 feet to the TRUE POINT OF BEGINNING; thence continuing North 25°12'30" West 3.50 feet, more or less, to a point on the Northwesterly line of an existing Drainage and Utility Easement; thence along said Northwesterly line of an existing Drainage and Utility Easement North 64°47'30" East 35.00 feet; thence departing said Northwesterly line of an existing Drainage and Utility Easement South 25°12'30" East 3.50 feet; thence South 64°47'30" West 35.00 feet to the TRUE POINT OF BEGINNING.

Containing 122.5 Square Feet, more or less.

## City of Loveland Planning Process Application

\*All information must be completed and collated before submittal will be accepted\*  
If you have questions or need additional information, please call 962-2523 (FAX 962-2945)

<b>Project Name:</b> LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION EASEMENT VACATION	
<b>Narrative Description of Project:</b> VACATION OF A PORTION OF A DRAINAGE & UTILITY EASEMENT	
Application Type (Please check):	
<input type="checkbox"/> <b>Annexation and PUD zoning:</b> \$800 + \$35 per acre up to 400 acres \$3 per acre above 400 acres. \$1500 Publication & Recordation fee	<input type="checkbox"/> <b>PUD preliminary development plan:</b> \$800 + \$2 per dwelling unit for residential and \$2 per acre for other.
<input type="checkbox"/> <b>Annexation and zoning other than PUD:</b> \$800 + \$25 per acre up to 400 acres + \$2 per acre above 400 acres. \$1500 Publication & Recordation fee	<input type="checkbox"/> <b>PUD final development plan:</b> \$800 + \$2 per dwelling unit for residential and \$2 per acre for other than residential.
<input type="checkbox"/> <b>PUD general development Plan:</b> \$800 + \$10 per acre up to 1,200 acres \$3 per acre above 1,200 acres.	<input type="checkbox"/> <b>Major subdivision final plat:</b> \$700 + \$5 per lot for residential and \$5 per acre for other than residential.
<input type="checkbox"/> <b>Amended Plat-BLA/Lot merger:</b> \$200	<input type="checkbox"/> <b>Major subdivision preliminary plat:</b> \$600 + \$5 per lot for residential and \$5 per acre for other.  <input type="checkbox"/> <b>Minor subdivision:</b> \$300 <input type="checkbox"/> <b>Special review:</b> \$500 <input type="checkbox"/> <b>Special review minor mod:</b> \$150 <input type="checkbox"/> <b>Rezoning</b> \$500 <input checked="" type="checkbox"/> <b>Vacation:</b> \$200
Legal Description of Property Boundary (Lots, Blocks, Tracts and Subdivision Name, or Metes & Bounds): See Attached Legal Description For Easement Area To Be Vacated	
Name of PUD (if applicable): ALFORD LAKE ADDITION Addresses of Existing Buildings or Property: 5285 CRABAPPLE CT., LOVELAND, CO. 80538 County Assessor parcel Number(s) (Phone (970) 498-7050): 96352-05-039	
<b>Applicant:</b> (Company Name) <u>DENNIS ROBBINS CARPENTRY, INC.</u>	
Company Person: <u>DENNIS ROBBINS</u> Phone: <u>970-566-4111</u> FAX: <u>N/A</u>	
Address: <u>28942 WELD CTY. RD. 15</u> City: <u>WINDSOR</u> State: <u>CO</u> Zip Code: <u>80550</u>	
<b>Consultant:</b> (Engineer, Surveyor, Architect) Company Name: <u>INTERMILL LAND SURVEYING, INC.</u>	
Contact Person: <u>ROB PERSICIANTE</u> Phone: <u>970-669-0516</u> FAX: <u>970-635-9775</u>	
Address: <u>1301 N. CLEVELAND AVE.</u> City: <u>LOVELAND</u> State: <u>CO</u> Zip Code: <u>80537</u>	
<b>Owner:</b> (Company Name): <u>DENNIS ROBBINS CARPENTRY, INC.</u>	
Contact Person: <u>DENNIS ROBBINS</u> Phone: <u>970-566-4111</u> FAX: <u>N/A</u>	
Address: <u>28942 WELD CTY. RD 15</u> City: <u>WINDSOR</u> State: <u>CO</u> Zip Code: <u>80550</u>	
FOR OFFICE USE ONLY	
Received By: _____	STAFF NOTES:
Planner Assigned: _____	
P & Z Number: _____	
Pre-Application Conference Date: _____	
Note: A pre-application conference is required prior to acceptance of any application for development or redevelopment, including applications for a building permit other than for a single or two-family dwelling unless there are no exterior alterations proposed to an existing building or to the property which require a permit from the City.	

EMAIL: DENNIS ROBBINS [denny@robbinscontracting.com](mailto:denny@robbinscontracting.com)  
 ROB PERSICIANTE [rob.ils@questoffice.net](mailto:rob.ils@questoffice.net)

### Site Data

#### Land Use & Zoning

Existing Use: SF Residence  
Proposed Use: SF Residence  
Existing Zoning & Area (Acres): PUD/122.5 S.F.

Master Land Use Plan Designation:  
Existing Adjacent Zoning and Use:  
East Side: PUD/SF South Side: PUD/SF (Vacant)  
West Side: PUD/SF (Vacant) North Side: PUD/CHURCH

Proposed Zoning & Area (Acres): PUD/122.5 S.F.  
Is any portion located in a floodplain? \_\_\_\_\_ Yes: \_\_\_\_\_ No: X  
If yes, please attach legal description.

#### Utility Service Provided by:

Water: Loveland Sewer: Loveland Electric: Loveland

#### General

Number of Units Existing: 1  
Number of Units Proposed: N/A  
Number of Phases: N/A  
Number of Units per Phase: N/A  
Number of Lots Proposed: N/A  
Lot/Tract Size Minimum: N/A  
Lot/Tract Size Maximum: N/A  
Lot/Tract Size Average: N/A  
Gross Density (DU/A): N/A  
Net Density (DU/A): N/A  
Percent (%) of Open Space Proposed: N/A

Non-Residential Bldg. Area (Sq. Ft.) Proposed: N/A  
Non-Residential Construction Floor Area Ratio: N/A  
Avg. Residential Bldg. Area (Sq. Ft.) Proposed: N/A  
Total Number of Parking Spaces: N/A  
Acreage of Site:  
a. Gross: 122.5 s.f.  
b. Right-of-Way: 0  
c. Net (a-b): 122.5 s.f.

Estimated Price Range of Dwellings Proposed: N/A  
Type of Housing Proposed (please check): N/A  
 Single Family  Townhouse  
 Duplex  Condominium  
 Multi-family (# of units) \_\_\_\_\_

Water Rights Paid – Dates & Amounts: Yes  
(For information, call the Water & Power Department at (970) 962-3717)

#### DESIGNATION OF REPRESENTATIVE:

The Undersigned owner(s) and lienholder(s) agree that Intermill Land Surveying, Inc. (Robert G. Persichitte) represents the undersigned in all matters pertaining to this project, including subsequent modifications to the application.

Owner: Dennis J. Ptkin Date: 4/16/2012  
Lienholder: \_\_\_\_\_ Date: \_\_\_\_\_

#### ACKNOWLEDGMENTS:

I, as the applicant or representatives of the applicant, hereby acknowledge that the application is correct and complete as per the specifications of the attached information sheet and checklist.

Dennis J. Ptkin Date: 4/16/2012  
Signature of applicant or Representative

Robert G. Persichitte Date: 04/10/2012  
for Intermill Land Surveying, Inc.

**INTERMILL LAND SURVEYING, INC.**  
1301 North Cleveland Avenue – Loveland, Colorado 80537  
P: 970-669-0516 – F: 970-635-9775  
E: intermill@qwestoffice.net

P-12-7131  
April 9, 2012

**PROPERTY DESCRIPTION FOR A PROPOSED EASEMENT VACATION BEING A PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO**

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Containing 122.5 Square Feet, more or less.

PREPARED BY AND ON BEHALF OF:

INTERMILL LAND SURVEYING, INC.  
1301 North Cleveland Avenue  
Loveland, Colorado 80537  
P: 970-669-0516  
F: 970-635-9775  
E: intermill@qwestoffice.net

Robert George Persichitte  
Colorado PLS 34174

Date: 04/09/2012



**INTERMILL LAND SURVEYING, INC.**

1301 North Cleveland Avenue – Loveland, Colorado 80537

P: 970-669-0516 – F: 970-635-9775

E: intermill@qwestoffice.net

P-12-7131

April 9, 2012

City of Loveland, Colorado  
Development Services – Current Planning  
500 East 3<sup>rd</sup> Street  
Loveland, Colorado 80537

RE: PROPOSED EASEMENT VACATION - PORTION OF LOT 39, BLOCK 1, ALFORD LAKE FIRST SUBDIVISION, CITY OF LOVELAND, COLORADO

To Whom It May Concern:

This letter is being prepared on behalf of Dennis Robbins Carpentry, Inc. (Attn: Dennis Robbins), the applicant, and shall act as a letter of request and explanation for a proposed Drainage and Utility Easement Vacation Request. Dennis Robbins Carpentry, Inc. is the owner of that certain property legally known as Lot 39, Block 1, ALFORD LAKE FIRST SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado. The property is commonly known as 5285 Crabapple Court, Loveland, Colorado 80538.

Dennis Robbins Carpentry, Inc. is requesting the vacation of a portion of an existing Five (5) Foot wide Drainage and Utility Easement dedicated with the Final Plat of said Alford Lake First Subdivision. This easement was dedicated with the Final Plat of said Alford Lake First Subdivision to allow area for utility line installation and to create an easement corridor to carry drainage runoff water(s) away from residential structures along the platted lot lines.

The site currently contains an existing single-family residence. The owner and applicant for this vacation request; Dennis Robbins Carpentry, Inc. being represented by Dennis Robbins, constructed the existing single-family residence on the lot. An error in the initial layout of the foundation for the existing single-family residence inadvertently placed the structure within the platted Drainage and Utility Easement along the Southeasterly property line of the subject lot. Subsequently, this also led to the structure being erroneously constructed within the required setback along this property line. A separate Setback Variance Request is being submitted and reviewed concurrently with this easement vacation request.

Due to the construction error for the existing single-family residence, Mr. Robbins is now applying for this easement vacation request to correct the error of the structure being placed in the existing Drainage and Utility Easement, for himself and the future property owners. To the best of our knowledge, and as evidenced by utility locates being performed on the property, no utility main lines serving this property or adjacent properties are installed within the portion of the Drainage and Utility Easement area to be vacated. The side lot drainage corridor to carry drainage runoff water(s) away from residential structures along the platted lot lines should not be

affected due to the minor amount of drainage runoff water(s) being conveyed through this portion of the existing Drainage and Utility Easement.

Please review this letter and the accompanying documents for this Drainage and Utility Easement Vacation request during regularly scheduled staff review schedules. As always, if any City of Loveland staff members have any questions, concerns or desire additional information on this request, please feel free to call myself at (970) 669-0516 or Mr. Robbins at (970) 566-4111.

Respectfully Submitted,

INTERMILL LAND SURVEYING, INC.  
1301 North Cleveland Avenue  
Loveland, Colorado 80537  
P: 970-669-0516  
F: 970-635-9775  
E: rob.ils@qwestoffice.net



Robert G. Persichitte  
For and On Behalf Of  
Dennis Robbins Carpentry, Inc.

**INTERMILL LAND SURVEYING, INC.**

1301 North Cleveland Avenue – Loveland, Colorado 80537

P: 970-669-0516 – F: 970-635-9775

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P-12-7131

April 9, 2012

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Development Services – Current Planning  
500 East 3<sup>rd</sup> Street  
Loveland, Colorado 80537

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Respectfully Submitted,

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F: 970-635-9775  
E: rob.ils@qwestoffice.net



Robert G. Persichitte  
For and On Behalf Of  
Dennis Robbins Carpentry, Inc.



700 Automation Drive, Unit I  
Windsor, CO 80550  
Phone: 970-686-6939  
Fax: 970-686-1188

Stormwater Engineering  
City of Loveland  
410 East 5<sup>th</sup> Street  
Loveland, CO 80537

May 14, 2012

To Whom It May Concern:

This letter is in reference to the Lot Grading Certification for Lot 39, Block 1 of Alford Lake First Subdivision (5285 Crabapple Court).

The foundation for this lot was incorrectly located by the contractor and encroaches on the existing drainage and utility easement on the south lot line. The corner that intrudes on the easement creates the high point on the south lot line (elevation 76.2) causing the lot runoff to flow southwest to Crabapple Court (elevation 75.2) and northeast to the existing concrete pan (elevation 68.0). Because of this, the encroachment will not impact the drainage for this lot.

This letter does not address potential utility issues created by vacating a portion of the easement or setback considerations for the adjacent lot.

If there are questions, please contact me at 970-686-6939.

Sincerely,

A handwritten signature in black ink is written over a circular professional engineer seal. The seal contains the text "COLORADO REGISTERED PROFESSIONAL ENGINEER" around the perimeter and "PATRICIA KROETCH" and "81398" in the center.

Patricia Kroetch, C.E.



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 4  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Brian Burson, Current Planning Division

**TITLE:**

An ordinance vacating a portion of a public right-of-way adjacent to Lot 1, Harlow Addition, City of Loveland, Larimer County, Colorado.

**RECOMMENDED CITY COUNCIL ACTION:**

Move to make the findings in Section VIII of the July 23, 2012 Planning Commission staff report, and adopt on first reading an ordinance vacating a portion of a public right-of-way in the Harlow Addition to the City of Loveland, Larimer County, Colorado.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

This is a public hearing to consider a legislative action to vacate a portion of a public right-of-way in the Harlow Addition to the City of Loveland. The applicant is First Bank. Conditions recommended by the Planning Commission on July 23, 2012 have been incorporated into the ordinance.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building and redevelop a new bank building on the site, with increased floor area and increased drive-up service. The proposed vacation is required to accommodate plans to provide adequate access and circulation on the redeveloped site.

The Planning Commission held a public hearing for the application on July 23, 2012. The Planning Commission recommended, by unanimous vote on the Consent Agenda, that City Council approve the vacation, subject to the conditions in Section IX of the July 23, 2012 Planning Commission staff report.

---

**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

---

**LIST OF ATTACHMENTS:**

- A. Ordinance
- B. August 21, 2012 staff memorandum

FIRST READING: August 21, 2012

SECOND READING: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT-OF-WAY  
ADJACENT TO LOT 1, HARLOW ADDITION, CITY OF LOVELAND, LARIMER  
COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation that portion of the public right-of-way described below, located adjacent to Lot 1 of the Harlow Addition, City of Loveland, Larimer County, Colorado; and

**WHEREAS**, the City Council finds and determines that, upon satisfaction of the conditions set forth below, no land adjoining any right-of way to be vacated will be left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement; and

**WHEREAS**, the City Council finds and determines that, upon satisfaction of the conditions set forth below, that portion of the public right-of-way to be vacated is no longer necessary for the public use and convenience; and

**WHEREAS**, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the easement to be vacated.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby adopts and makes the findings set forth above.

**Section 2.** That, based on the City Council’s findings described above and subject to the conditions precedent set forth in Section 3 below, the following described portion of public right-of-way be and the same is hereby vacated:

**A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY**

**AND THE WESTERLY LINE OF SAID LOT 1 S00°24'40"W, 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY N89°35'20"W, 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10 N00°24'40"E, 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N89°43'40"E, 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.**

**BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING S00°24'40"W BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.**

**Section 3.** That as provided in Sections 16.36.050 and 16.36.060 of the Loveland Municipal Code and in order to preserve and promote the public health, safety and welfare of the inhabitants of the city and the public generally, the vacation of a portion of the public right-of-way as set forth in Section 2 above shall not be effective until all of the following conditions precedent (the "Conditions") have been satisfied:

- a. The property owner has constructed, in accordance with all of the ordinances and regulations of the City and at its sole cost and expense, a paved public access and emergency access way to replace and widen the vacated alley right of way in the location depicted on **Exhibit A** attached hereto and incorporated herein (the "Public Access Way"); and
- b. The City Engineer has determined that construction of the Public Access Way has been satisfactorily completed in accordance with all of the ordinances and regulations of the City; and
- c. A Grant of Easement, in the form and substance attached hereto as **Exhibit B** and incorporated herein (the "Easement"), for the Public Access Way granting a public access, emergency access and utility easement has been duly executed and delivered to the City Current Planning Division; and
- d. The Current Planning division has accepted the Easement and has recorded the Easement and this Ordinance in the real property records of the Larimer County Clerk and Recorder.

No certificate of occupancy for any new building or structure on Lots 9 and 10 of the Harlow Addition shall be issued by the City until the foregoing Conditions have been fully satisfied.

**Section 4.** That as of the date and time when the Easement has been accepted and the Easement and this Ordinance have been recorded by the City, the Conditions shall be deemed satisfied and the vacation of a portion of the public right-of-way set forth in Section 2 above shall be effective and, subject to compliance with the ordinances and regulation of the City, a certificate of occupancy for the proposed new building on Lots 9 and 10, Harlow Addition to the City of Loveland, Larimer County Colorado may thereafter be issued.

**Section 5.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 6.** This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

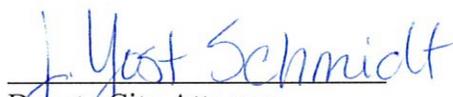
ADOPTED this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

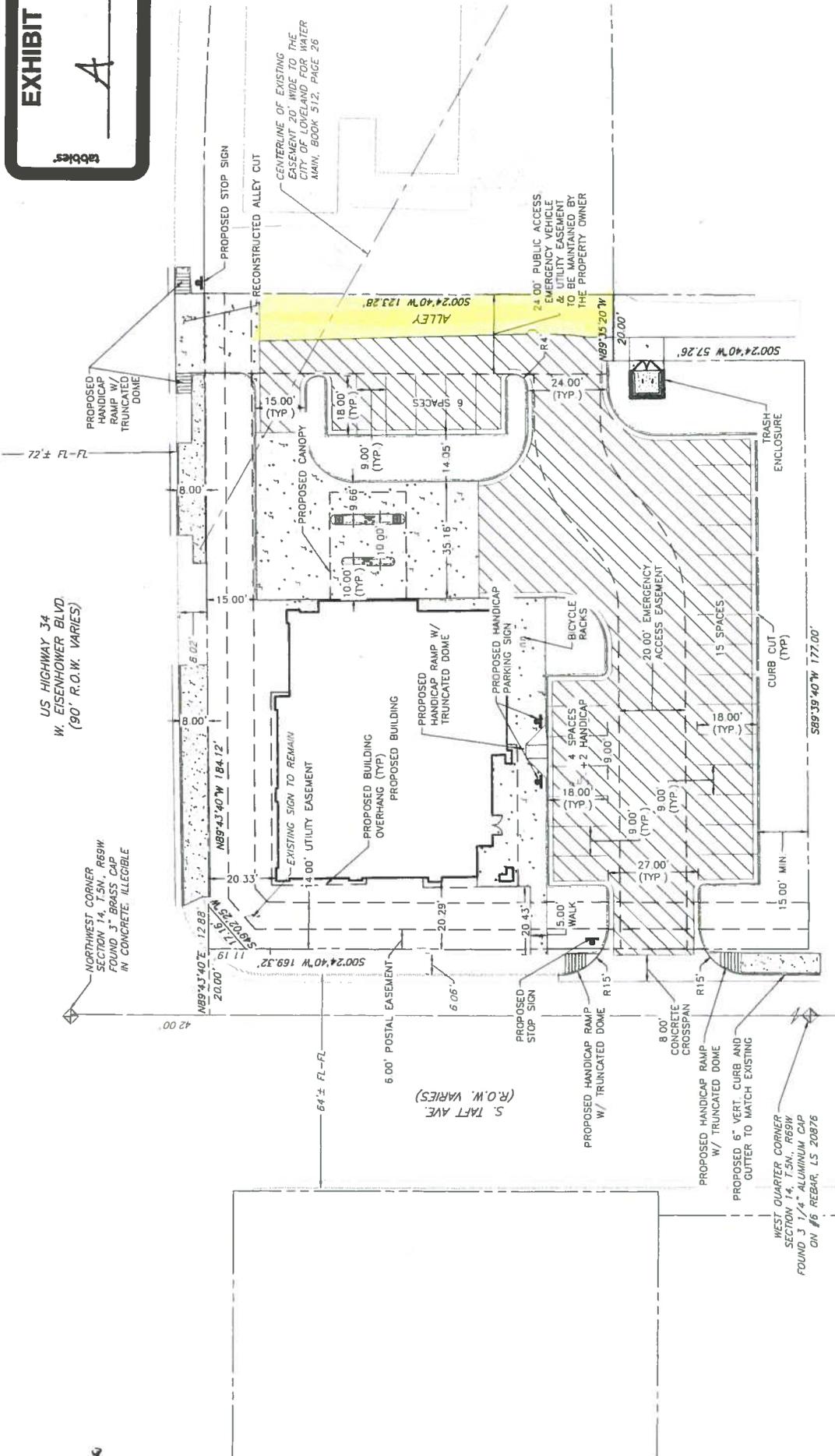
**ATTEST:**

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

**EXHIBIT**  
**A**



US HIGHWAY 34  
W. EISENHOWER BLVD  
(90' R.O.W. VARIES)

NORTHWEST CORNER  
SECTION 14, T. 5N., R. 65W  
FOUND 3" BRASS CAP  
IN CONCRETE, ILLEGIBLE

S. TAFT AVE.  
(R.O.W. VARIES)

WEST QUARTER CORNER  
SECTION 14, T. 5N., R. 65W  
FOUND 3 1/4" ALUMINUM CAP  
ON #6 REBAR, LS 20876

## EXHIBIT B

### GRANT OF EASEMENT

**THIS INDENTURE**, made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **FIRST BANK**, a \_\_\_\_\_, whose address is \_\_\_\_\_, Loveland, CO [*insert zip*] as Grantor, and the **CITY OF LOVELAND, COLORADO**, a municipal corporation, hereinafter referred to as “City”,

#### WITNESSETH:

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, Grantor has this day bargained and sold, and by these presents does bargain, sell, convey, transfer and deliver unto the City, its successors and assigns, a non-exclusive Public Access, Emergency Access, and Utility Easement in, over and across the real estate hereinafter described (the “Easement”).

The term “Public Access” shall mean and include the perpetual right to enter upon said property at any time for use as a right of way for vehicular and pedestrian access by the public in, over, and across the Easement.

The term “Emergency Access” shall mean and include the perpetual right to enter upon said property at any time for use as a right of way for access over and across the Easement by local, state or federal emergency response agencies and any entity responding at the direction of such an agency.

The term “Utility” as used herein shall mean and include the perpetual right to enter upon said property at any time that the City may see fit, and to construct and install City owned utility systems in, through, and under the Easement and to repair, replace, relocate, inspect, operate and maintain said City owned utility systems provided, however, that City shall restore the ground surface to its prior condition after disturbing the same. The term “City-owned utility systems,” as used herein, shall include above and below ground wires, lines, cables, ducts, pipes, pedestals, risers, poles, vaults, manholes, fire hydrants, and other equipment, appurtenances, and structures associated with Electric, Water, Stormwater, and Sanitary Sewer purposes and which are owned and operated by the City. Grantor further agrees that any above or below ground private utility systems and appurtenances and other above or below ground permanent or substantial structures not owned and maintained by the City shall not be installed or encroach upon any portion of the Easement unless first approved otherwise by the City.

Grantor shall, in accordance with the ordinances and regulations of the City, construct surface improvements located on the Easement as necessary and appropriate for for Public Access and Emergency Access and shall maintain such improvements in good condition and repair and free of obstruction at all times. All responsibility and cost of construction, operation, maintenance, repair, and reconstruction of surface improvements located on the Easement for Public Access and Emergency Access shall be borne by the Grantor, its heirs, successors and assigns. Except as expressly provided herein, the City of Loveland shall have no obligation for construction, operation, maintenance, repair or reconstruction of surface improvements located on the Easement for Public Access and Emergency Access.

The Easement for right of way hereby granted, situated in the City of Loveland, County of Larimer, State of Colorado is described on the attached **Exhibit 'A'** and further depicted on the attached **Exhibit 'B'** both of which are incorporated herein by reference.

**TO HAVE AND TO HOLD** said Easement for right of way unto the City, its successors and assigns forever.

Grantor does hereby covenant with the City that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the Easement for right of way herein granted, that the said Easement for right of way is free and clear of all encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

**IN WITNESS WHEREOF**, the Grantor has executed this Grant of Easement the day and year first above written.

*[Remainder of Page Intentionall Blank]*



**CITY OF LOVELAND**

Official

Acceptance: \_\_\_\_\_  
Name Title Date

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A TO GRANT OF EASEMENT  
LEGAL DESCRIPTION OF EASEMENT**

A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY AND THE WESTERLY LINE OF SAID LOT 1  $S00^{\circ}24'40''W$ , 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY  $N89^{\circ}35'20''W$ , 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10  $N00^{\circ}24'40''E$ , 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE  $N89^{\circ}43'40''E$ , 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.

BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING  $S00^{\circ}24'40''W$  BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

**EXHIBIT B TO GRANT OF EASEMENT**



**DEVELOPMENT SERVICES**  
**Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537  
 (970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

## MEMORANDUM

**TO:** City Council

**FROM:** Brian Burson, Current Planning Division

**DATE:** August 21, 2012

**SUBJECT:** Vacation of a portion of public alley right-of-way in the Harlow Addition

### I. EXHIBITS

#### A. July 23, 2012 Planning Commission hearing agenda

#### B. July 23, 2012 Planning Commission staff report including:

1. Applicant's Vacation request
2. Vacation exhibit and legal description
3. Neighborhood context map
4. Harlow Addition annexation map (for information only)
5. Draft amended plat for First Bank site, incorporating the vacated alley (for information only)
6. Draft Site Development Plan for bank redevelopment (for information only)

### II. EXECUTIVE SUMMARY

#### A. Project Description

The City Council public hearing is to consider vacation of the northern 123 feet of the public alley right-of-way lying along the west edge of Lot 1, Block 1, of the Harlow Addition to the City of Loveland. The existing alley right-of-way is platted as 20 feet wide, connecting to the south side of West Eisenhower Boulevard and extending south approximately 460 feet. It is a dead-end alley, not connecting to any other public street or alley to the south.

The First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are also undergoing City review (see **Attachment #4 of Exhibit B**). Adequate access and circulation for the bank requires

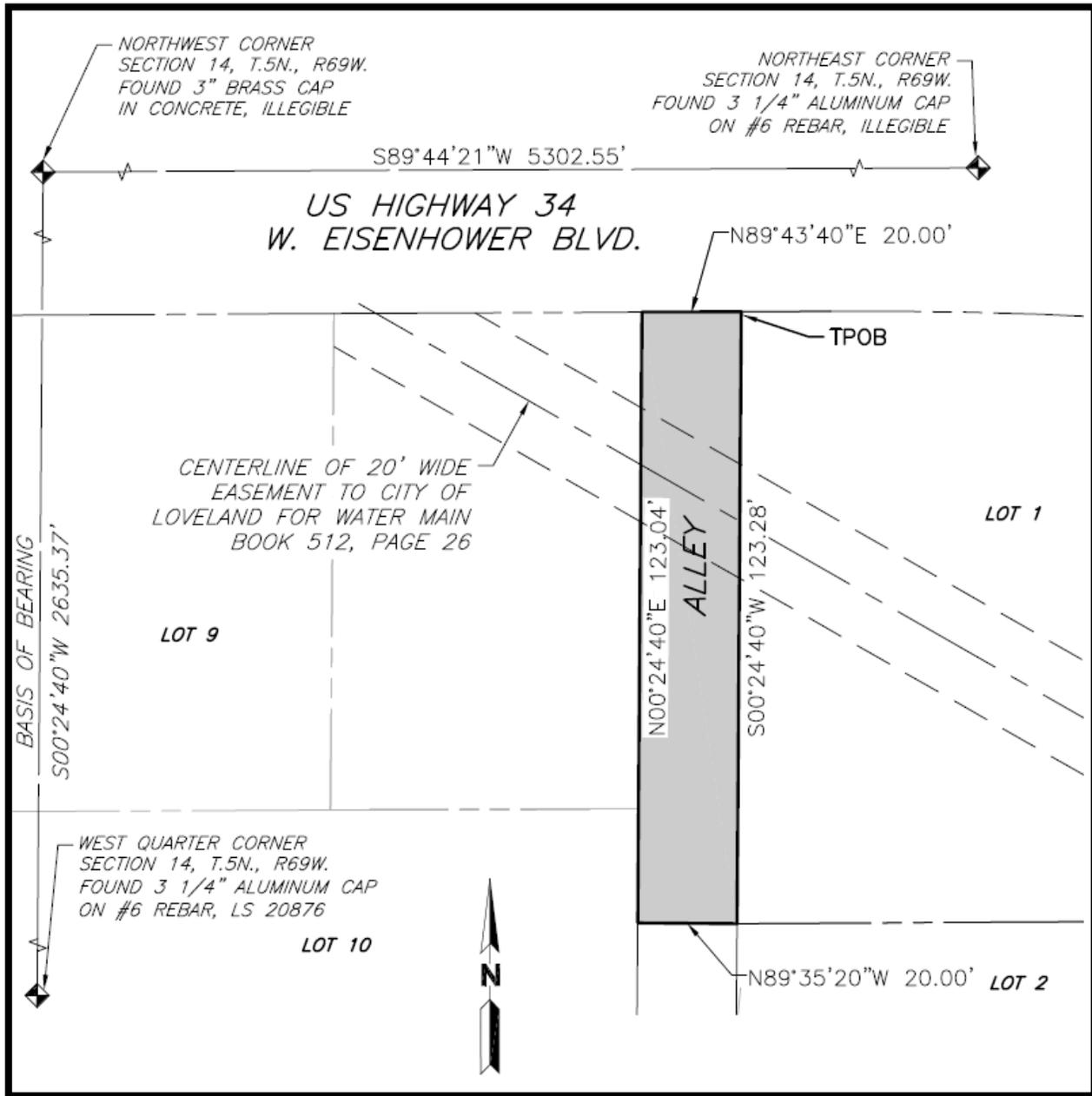
access to West Eisenhower. The current site has a private access onto West Eisenhower, as well as the existing alley, abutting the east side of the bank property, and providing access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate this portion of the public alley ROW and convert it to a shared access easement. This will be dedicated as a new access easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved (see **Attachment #6 of Exhibit B**). Transportation, Fire and utility staff support the application, with the recommended conditions

**B. Vicinity Map**



**C. Alley vacation Exhibit**



**D. Findings**

City staff has reviewed the application and believes that all required findings can be made, with emphasis on the following:

- That no land adjoining the right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.

- That the right-of-way to be vacated is no longer necessary for the public use and convenience.

(For further analysis, please see the July 23, 2012 Planning Commission staff report included with this staff memorandum as **Exhibit B**.)

#### **E. Key Issues**

Staff has reviewed the application the basis of all applicable City codes and standards, and believes that all key issues have been resolved based on the City Comprehensive Plan, codes, and standards.

#### **F. Planning Commission Recommendation**

The Planning Commission held a public hearing for the application on July 23, 2012. The matter was included in the Consent Agenda of the Planning Commission meeting, and there was no request to remove it for discussion or questions. Planning Commission voted to recommend approval of the vacation by unanimous vote on the Consent Agenda. The July 23, 2012 Planning Commission agenda is included with this staff memorandum as **Exhibit A**.

#### **G. Subsequent to Planning Commission**

Since the Planning Commission hearing, staff has received no further information, questions or concerns from the Applicant, the neighborhood or the general public.

### **III. RECOMMENDED CONDITIONS**

City staff and the Planning Commission recommend the following condition be made part of any approval of the vacation application. This condition has been incorporated into the vacation ordinance. By adopting the ordinance, City Council will automatically adopt this condition.

#### **Current Planning:**

1. The property owner shall dedicate to the City, at his/her sole expense, a public easement for access, emergency access and utility easement to replace and widen the vacated alley right-of-way, as shown on **Attachment #5 of Exhibit B** of this report. In addition, no Certificate of Occupancy for the new building shall be issued by the City until this public easement has been dedicated and recorded.



**LOVELAND PLANNING COMMISSION MEETING  
AGENDA**

**Monday, July 23, 2012  
500 E. 3<sup>rd</sup> Street – Council Chambers  
Loveland, CO 80537**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, GENDER, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMODATIONS TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2523 OR TDD 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. REPORTS:**

**a. Citizen Reports**

This is time for citizens to address the Commission on matters not on the published agenda.

**b. Staff Matters**

**c. Committee Reports**

**d. Commission Comments**

Policy matters, directions to staff, etc.

**IV. CONSENT AGENDA:**

The consent agenda includes items for which no discussion is anticipated. However, any Commissioner, staff member or citizen may request and effect removal of an item from the consent agenda for discussion. Items removed from the consent agenda will be heard at the beginning of the regular agenda.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented.

Adoption of the items remaining on the Consent Agenda is considered as adoption by the Planning Commission and acceptance by the Applicant of the staff recommendation for those items.

**EXHIBIT A**

**V. CONSENT AGENDA:****1. Harlow Addition Alley ROW Vacation.**

This is a public hearing item to consider vacation of a portion of public alley right-of-way located in the Harlow Addition. The First Bank proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are undergoing City review. The Applicant proposes to vacate the public alley ROW and designate it as a shared access easement. The Applicant will dedicate a new public shared access, emergency access and utility easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley.

**VI. ADJOURNMENT**



## Planning Commission Staff Report

July 23, 2012

**Agenda #:** Consent Agenda - 1

**Title:** Harlow Addition Alley ROW  
Vacation

**Applicant:** First Bank

**Request:** vacation of a portion of public alley  
ROW

**Location:** along the south side of West  
Eisenhower, approximately 200 feet  
east of North Taft Avenue

**Staff Planner:** Brian Burson

**Staff Recommendation:**

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

**Recommended Motion:**

1. *Move to make the findings listed in Section VIII. of this report dated July 23, 2012; and, based on those findings, recommend approval of the vacation of a portion of public alley right-of-way in the Harlow Addition, as described in Attachment #2 of this staff report, and subject to the Condition in Section IX. of this report.*

**Summary of Analysis**

This is a public hearing item to consider vacation of a portion of public alley right-of-way located in the Harlow Addition. The First Bank proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are undergoing City review. Adequate access and circulation for the bank requires access to West Eisenhower. The current site has a private access onto West Eisenhower as well as the existing alley which provides access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate the public alley ROW and designate it as a shared access easement. The Applicant will dedicate a new public shared access, emergency access and utility easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved. Transportation, Fire and utility staff support the application, with the recommended conditions.

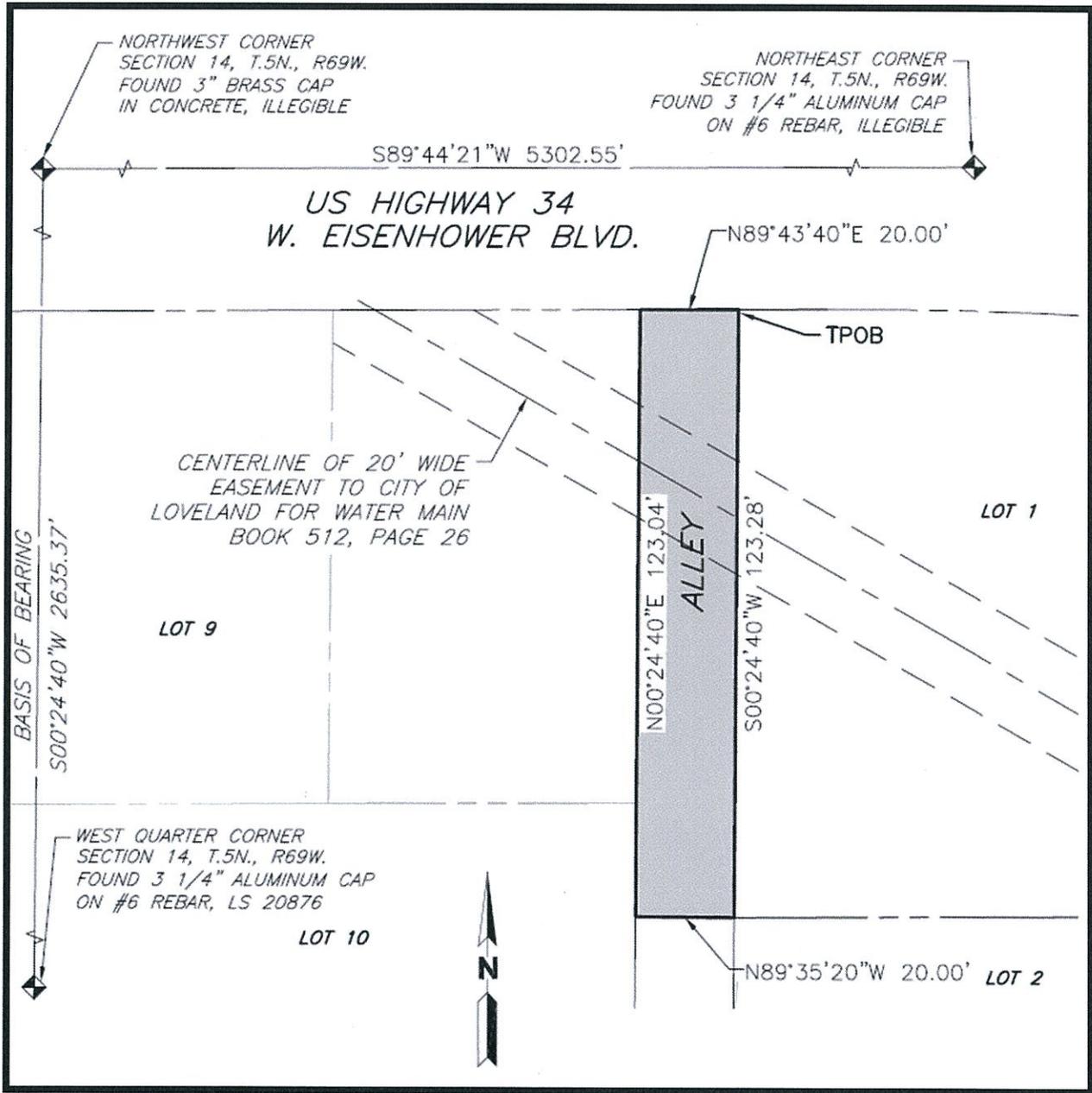
**I. ATTACHMENTS:**

1. Applicant's Vacation request
2. Vacation exhibit and legal description
3. Neighborhood context map
4. Harlow Addition annexation map (for information only)
5. Draft amended plat for First Bank site, incorporating the vacated alley (for information only)
6. Draft Site Development Plan for bank redevelopment (for information only)

**II. VICINITY MAP:**



**III. VACATION EXHIBIT:**



## **IV. PROJECT DESCRIPTION:**

### **Summary**

The application proposes to vacate the northern 123 feet of the public alley right-of-way lying along the west edge of Lot 1, Block 1, of the Harlow Addition to the City of Loveland. The existing alley right-of-way is platted as 20 feet wide, connecting to the south side of West Eisenhower Boulevard and extending south approximately 460 feet. It is a dead-end alley, not connecting to any other public street or alley to the south.

The First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are also undergoing City review. (See **Attachment #4.**) Adequate access and circulation for the bank requires access to West Eisenhower. The current site has a private access onto West Eisenhower, as well as the existing alley, abutting the east side of the bank property, and providing access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate this portion of the public alley ROW and convert it to a shared access easement. This will be dedicated as a new access easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved. Transportation, Fire and utility staff support the application, with the recommended conditions

### **Action to be taken by the Planning Commission**

Planning Commission must conduct a public hearing on the application and formulate a recommendation which will be forwarded to the City Council, to be considered as part of their subsequent public hearing, currently scheduled for August 7, 2012. Planning Commission's consideration is legislative, meaning that the Planning Commission can make any reasonable determination, without regard to any adopted City codes, standards or policies. However, if the Planning Commission determines to recommend denial of the application, it is not within the purview of the Planning Commission to grant or recommend access that is not in compliance with adopted City codes, standards policies. Action on a vacation application can include conditions of approval. Therefore Planning Commission can recommend conditions for the application, which will be passed on to the City Council for the subsequent public hearing and final decision. Staff has recommended conditions in **Section IX.** of this staff report.

## V. KEY ISSUES:

City staff have reviewed the application on the basis of all applicable City policies, codes and standards, including the findings necessary for approval of a public alley right-of-way vacation. Staff believes that all key issues have been resolved through the review process. No neighborhood meeting is required for the application, and none has been held.

## VI. BACKGROUND:

December 1957 - approval of Harlow Addition

## VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

- A. Notification:** An affidavit was received from Scott Paling of Martin & Martin Consulting Engineers, certifying that on July 6, 2012, written notice was mailed to all owners of property abutting the right-of-way to be vacated, as well as all other owners of other property abutting the alley southward; and a sign was posted in a prominent location on the edge of the right-of-way at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on July 7, 2012. All notices stated that the Planning Commission would hold a public hearing on July 23, 2012. This type of application does not constitute a "Development Plan", as it relates to written notice requirements to owners of mineral estates; therefore, no notice was required, and no element of mineral rights must be considered in the public hearing.
- B. Neighborhood Response:** No neighborhood meeting is required for the application, and none has been held. Since establishing the public notices, staff has received no inquiries or concerns from the neighborhood or general public.

## VIII. FINDINGS AND ANALYSIS:

In reviewing the application, the Planning Commission must determine if the findings specified in the Municipal Code can be met. These findings are listed in italicized font below, along with a summary analysis provided by City staff. If, based on the submitted application, the Planning Commission determines that the findings can be met, the Planning Commission may recommend approval of the vacation application. If the Planning Commission determines that the findings cannot be met, the Planning Commission must make different findings and recommend disapproval of the vacation application.

1. *That no land adjoining any right-of-way or easement to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

**Transportation Development Review:** The applicant is proposing to replace the 20-foot wide public alley with a 24-foot wide paved public access easement that is maintained by the property owner. The vacation of the alley will not negatively impact access to the City's public street network as long as the proposed development replaces the alley with a public access easement and a paved surface that is maintained by the property owner.

2. *That the right-of-way or easement to be vacated is no longer necessary for the public use and convenience.*

**Transportation Development Review:** The applicant is proposing to replace the 20-foot wide public alley with a 24-foot wide paved public access easement that is maintained by the property owner. With this provision, this portion of the public alley is no longer needed for the public use and convenience.

**Water/Wastewater:** The subject area to be vacated is the City's current service area for both water and wastewater. The Department finds that vacating the portion of the existing alley will not impact the existing water and wastewater utility configuration within and adjacent to this development, provided the vacated alley is reserved as a public utility easement. With this provision, the existing alley to be vacated is no longer necessary for public use and convenience.

**Power:** The existing building at 1352 W. Eisenhower Blvd. is currently served by three phase underground power from an underground vault located at the corner of W. Eisenhower Blvd. and N. Taft Ave. An underground power line runs along the north property line from this vault at the northwest corner of the existing lot to the west side of the alley. An underground/overhead power line runs the length of the east boundary of the existing lot. The existing overhead portion of the power line will need to be undergrounded at the developer's expense. Additionally, the overhead electric service to the building at 1323 Harlow Ln. will need to be undergrounded at the developer's expense. The proposed 24' ingress/egress & utility easement will be adequate for the underground electric line.

**Fire:** The development proposes to provide an emergency access easement and roadway to replace the vacated alley that currently connects to Eisenhower. This easement will accommodate emergency vehicle access and turning movements to all properties currently accessed by the alley. Therefore, vacation of the alley will not negatively impact fire protection and is no longer needed for the use and convenience of the public.

**Stormwater:** The existing 20 foot wide ingress/egress & utility easement may be vacated along with redevelopment of the subject property which accommodates storm drainage conveyance.

## **IX. RECOMMENDED CONDITIONS:**

### **Current Planning:**

1. The property owner shall dedicate to the City, at his/her sole expense, a public easement for access, emergency access and utility easement to replace and widen the vacated alley right-

of-way, as shown on **Attachment #5** of this report. The City Council ordinance vacating the alley right-of-way shall include provisions to assure that this is accomplished, to the full satisfaction of the City, before said ordinance is recorded. In addition no Certificate of Occupancy for the new building shall be issued by the City until this shared easement has been dedicated and recorded.



April 11, 2012

City of Loveland  
Current Planning Division  
500 East Third Street  
Loveland, CO 80537  
Attn: Mr. Brian Burson

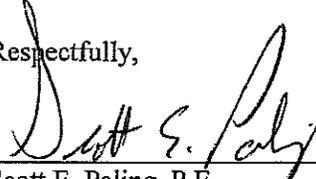
RE: Alley Vacation Request

Dear Mr. Burson,

On behalf of the owner of the property located at 1352 West Eisenhower Boulevard, FIRSTBANK, Martin/Martin Inc. is requesting a vacation of 2,463 square feet of alley from the City of Loveland.

With the redevelopment of the existing First Bank, site access will be located along the existing alley. This access location will increase traffic on the alley and will cause the Alley ACF threshold to be exceeded. Once the alley is vacated, a 24' ingress/egress easement will replace the alley. A driveway cut will be constructed at the previous alley cut to continue to provide ingress/egress for the residential property owners to the south as well as the business customers

Please consider this request for the alley vacation, and call if you wish to discuss these items further. I can be reached at my direct line number; 720-544-5347.

Respectfully,  
  
\_\_\_\_\_  
Scott E. Paling, P.E.

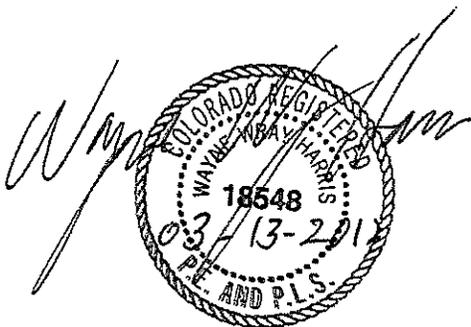
ALLEY VACATION  
HARLOW ADDITION

A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY AND THE WESTERLY LINE OF SAID LOT 1  $S00^{\circ}24'40''W$ , 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY  $N89^{\circ}35'20''W$ , 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10  $N00^{\circ}24'40''E$ , 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE  $N89^{\circ}43'40''E$ , 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.

BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING  $S00^{\circ}24'40''W$  BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

PREPARED BY WAYNE W. HARRIS, P.E., P.L.S.  
FOR AND ON BEHALF OF  
MARTIN/MARTIN, INC.  
12499 WEST COLFAX AVENUE  
LAKEWOOD, COLORADO 80215  
MARCH 13, 2012



### ALLEY VACATION

PART OF ALLEY IN HARLOW ADDITION  
LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH,  
RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
CITY OF LOVELAND, LARIMER COUNTY,  
COLORADO

NORTHWEST CORNER  
SECTION 14, T.5N., R.69W.  
FOUND 3" BRASS CAP  
IN CONCRETE, ILLEGIBLE

NORTHEAST CORNER  
SECTION 14, T.5N., R.69W.  
FOUND 3 1/4" ALUMINUM CAP  
ON #6 REBAR, ILLEGIBLE

S89°44'21"W 5302.55'

US HIGHWAY 34  
W. EISENHOWER BLVD.

N89°43'40"E 20.00'

TPOB

CENTERLINE OF 20' WIDE  
EASEMENT TO CITY OF  
LOVELAND FOR WATER MAIN  
BOOK 512, PAGE 26

LOT 1

LOT 9

BASIS OF BEARING  
S00°24'40"W 2635.37'

N00°24'40"E 123.04'

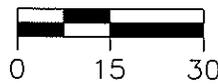
ALLEY

S00°24'40"W 123.28'

WEST QUARTER CORNER  
SECTION 14, T.5N., R.69W.  
FOUND 3 1/4" ALUMINUM CAP  
ON #6 REBAR, LS 20876

LOT 10

N89°35'20"W 20.00' LOT 2



SCALE: 1"=30'

REV: MAY 22, 2012  
MARCH 07, 2012

THIS EXHIBIT DOES NOT REPRESENT A  
MONUMENTED SURVEY. IT IS INTENDED ONLY  
TO DEPICT THE ATTACHED DESCRIPTION.

PARCEL CONTAINS 0.0565 AC (2,463 SF)

 **MARTIN / MARTIN**  
CONSULTING ENGINEERS

12499 WEST COLFAX AVE.  
LAKEWOOD, CO 80215  
303.431.6100  
FAX 303.431.4028

## EXHIBIT B

DRAWING LOCATION: G:\HARRIS\23416 - First. Bank Loveland\Plans\exhibits\ROW Vacation.dwg



The Internal LOGIC System

**Find Address**

[Click here for search tips](#)

Street Number

Street Name  
 excluding N,S,E,W and AVE, DR, etc.

Use Auto Complete

---

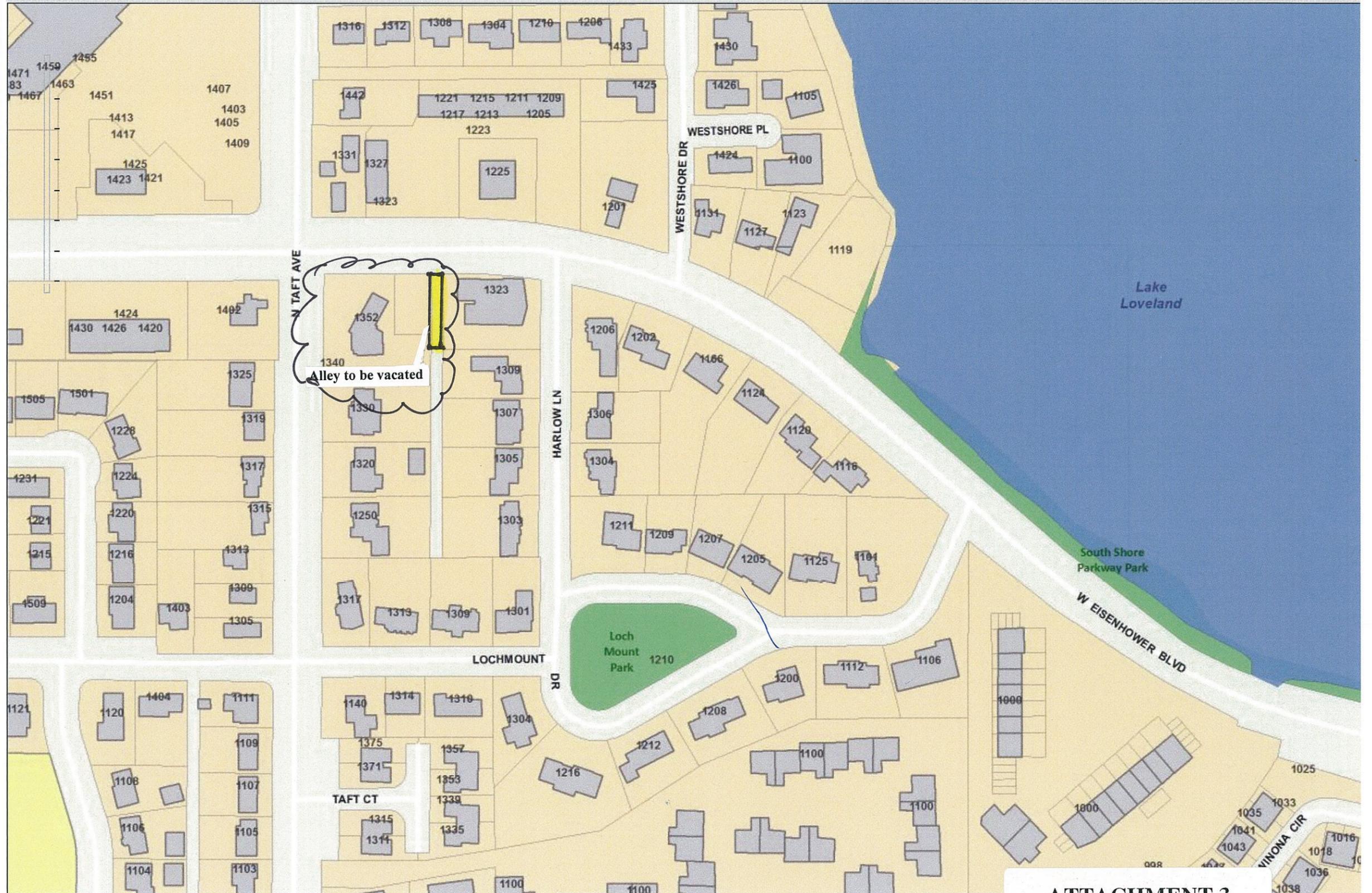
Parks

Golf Courses

Public Facilities

Public Schools

Environmental Considerations



PLAT OF HARLOW ADDITION TO THE CITY OF LOVELAND, COLORADO.

The undersigned being the owners of the following described property, to-wit:-

Beginning at a point on the West line of Section 14, Township 5 North, Range 69 West of the 6th P. M., 42 feet South of the North-west corner of said Section 14, thence South 0°45' West along the west line of said Section 14, 505.5 feet to the Northwesterly corner of the Loch-Mount Addition to the City of Loveland, Colorado; thence East 400 feet along the North line of said Loch-Mount Addition to the center line of Harlow Lane; thence North 0°45' East 100 feet; thence East 213.0 feet also along the North side of said Loch-Mount Addition; thence North 0°45' East 283.0 feet to a point on the South line of the State Highway right of way; thence Northwesterly along a curve to the left having a radius of 915 feet to a point 235 feet S. 89°56' East of the point of beginning; thence North 89°56' West 235 feet to the point of beginning.

do hereby subdivide the same into lots and plat the same and dedicate the same as HARLOW ADDITION to the City of Loveland, Colorado; the undersigned do hereby confirm and recognize the lot lines, lot numbers and area of lots one to eight-A both inclusive on the within Plat as being the same identical lots as shown on Plat of HARLOW SUBDIVISION heretofore filed and the undersigned do hereby state that the within Plat of Harlow Addition shall supercede the Plat of Harlow Subdivision.

The undersigned hereby dedicate to the public all streets, alleys and easements as shown on the plat hereto attached.

IN WITNESS WHEREOF the undersigned have hereunto set their hands and seals this 15th day of October, A.D. 1957

Signature block containing names of Roy S. Harlow, Jack L. Henning, Helen B. Henning, Oliver N. Craton, Bertha A. Craton, James Edlich, Harry Sumner, and Jane Sumner, along with witnesses E.M. Adkins, Freda J. Adkins, Clark Wiedow, and Margery Wiedow.

CERTIFICATE

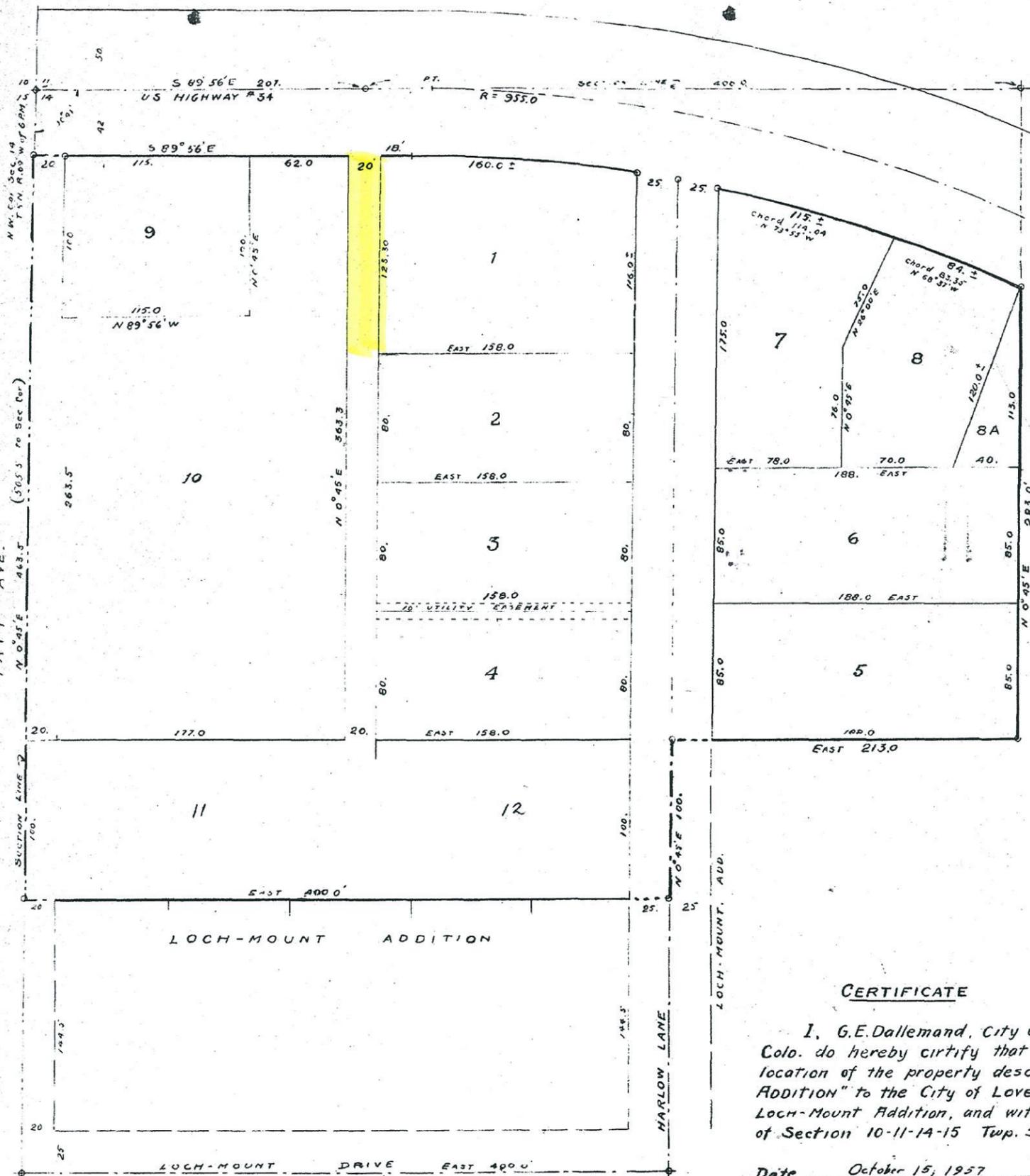
I, G.E. Dallemand, City engineer of the City of Loveland Colo. do hereby certify that the attached Plat shows the true location of the property described and platted as the "HARLOW ADDITION" to the City of Loveland, Colo. with respect to the Loch-Mount Addition, and with respect to the common corner of Section 10-11-14-15 Twp. 5N Rng 69 W. of 6th P.M.

Date October 15, 1957 G.E. Dallemand city engineer.

STATE OF COLORADO } ss COUNTY OF LARIMER } The foregoing instrument was acknowledged before me this 15th day of October A.D. 1957 by Roy S. Harlow, Jack L. Henning, Helen E. Henning, Oliver N. Craton, Bertha A. Craton, James H. Edlich, Harry Sumner, Jane S. E.M. Adkins, Freda J. Adkins, Clark Wiedow, Margery Wiedow.

Witness my hand and official seal Leatha George Notary Public

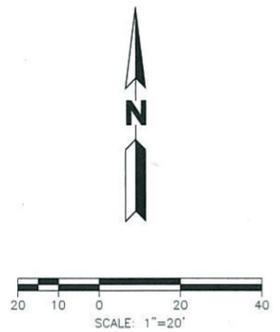
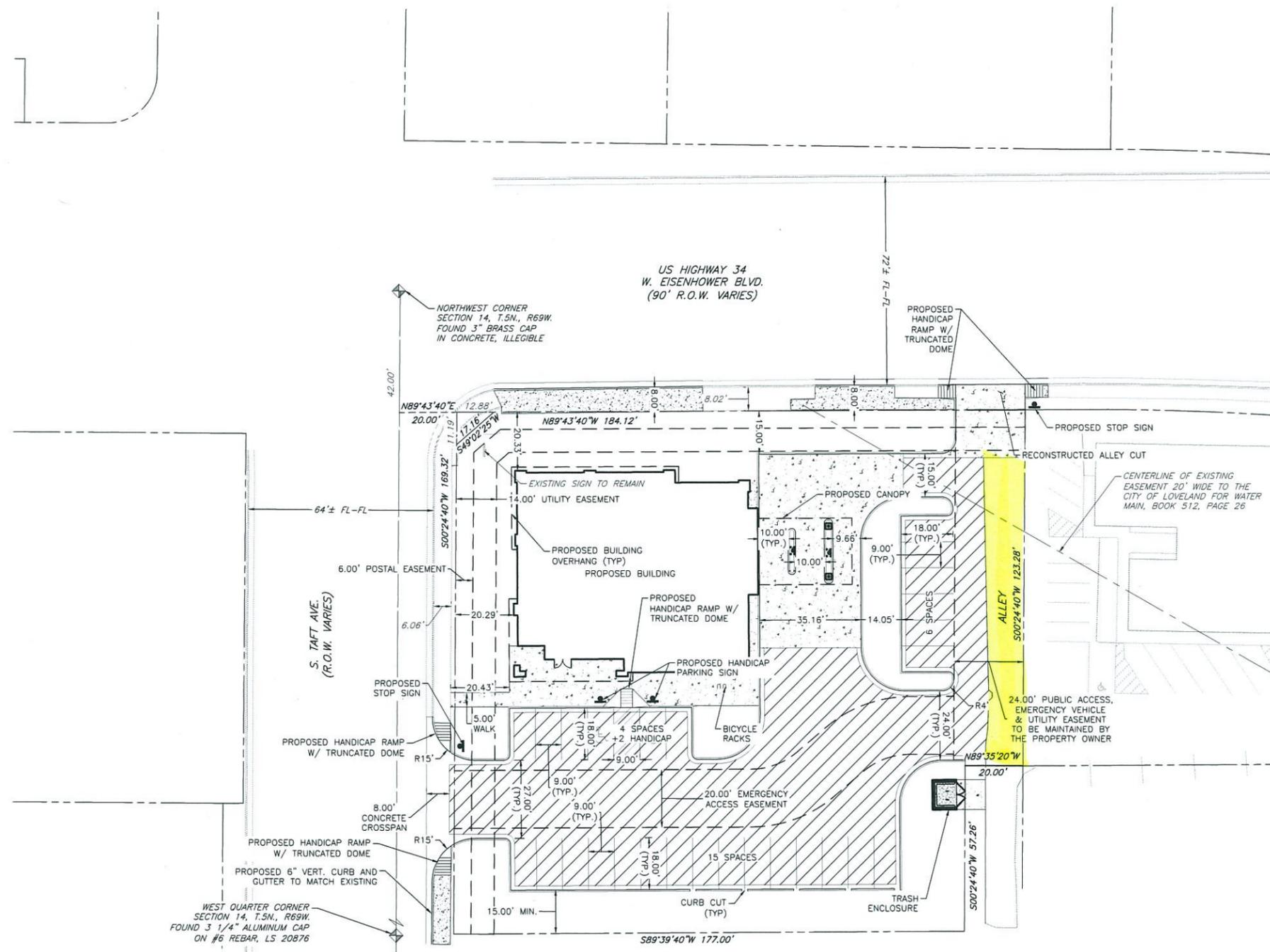
My Commission expires April 15, 1961





NOTES:

- 1. SEE LANDSCAPE PLAN FOR ALL TREE AND LANDSCAPING INFORMATION.



Location: G:\HARRIS\234116 First Book Loveland\Plans\SDPA\03 - Site.dwg  
 Drawn By: R. SILVA  
 Job Number: Sheet Number:

Project Manager: S. PALING  
 Designed By: S. PALING

Plot Date: PLAT DATE

ATTACHMENT 6

EXHIBIT B



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 5  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Greg George, Development Services  
**PRESENTER:** Alison Hade

**TITLE:**

Resolution of the City Council of the City of Loveland, Colorado approving a Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt a resolution of the City of Loveland, Colorado approving the Community Development Block Grant Annual Action Plan and Grant Application for 2012-2013.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:** A public hearing to consider an administrative action to adopt a resolution approving the 2012-2013 Community Development Block Grant (CDBG) Annual Action Plan. Approval of the plan will allow the City to receive and distribute CDBG funds.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Resolution #R-45-2012 authorizes the allocation of 2012-2013 Community Development Block Grant funding that was appropriated in the City budget.

**SUMMARY:**

HUD requires the City of Loveland to complete an Annual Action Plan describing how the City intends to spend CDBG funding between October 1, 2012 through September 30, 2013. The Loveland City Council authorized the allocation of 2012-2013 CDBG funding on June 5, 2012 by

adoption of Resolution #R-45-2012. The Annual Action Plan provides detailed information for HUD and includes the City's official application for funding.

---

**REVIEWED BY CITY MANAGER:** *William D. Cahill*

---

**LIST OF ATTACHMENTS:**

- A. Resolution
- B. Annual Action Plan

**RESOLUTION #R-54-2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN AND GRANT APPLICATION FOR 2012 – 2013**

**WHEREAS**, the City of Loveland, Colorado receives federal Community Development Block Grant (“CDBG”) dollars from the U.S. Department of Housing and Urban Development (“HUD”); and

**WHEREAS**, HUD requires the City to submit an annual action plan and grant application providing detailed information regarding the City’s plan to spend the federal funding; and

**WHEREAS**, the City has developed a Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013, a copy of which is on file with the City Clerk (“Annual Action Plan”); and

**WHEREAS**, the Annual Action Plan includes information regarding the allocation of 2012 – 2013 CDBG funds that was approved by the City Council on June 5, 2012 through the adoption of Resolution #R-45-2012; and

**WHEREAS**, the City Council desires to approve the Annual Action Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013, a copy of which is on file with the City Clerk, is hereby approved.

**Section 2.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21<sup>st</sup> day of August, 2012.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt  
Deputy City Attorney

# 2012-2013

## Community Development Block Grant

### Annual Action Plan

City of Loveland



The City of Loveland's 2012–2013 Community Development Block Grant (CDBG) Annual Action Plan was produced by the Loveland Community Partnership Office. For more information on the plan, or to make a comment, please contact:

Alison Hade  
Community Partnership Administrator  
City of Loveland  
500 East Third Street, Suite 210  
Loveland, Colorado 80537  
(970) 962-2517  
[alison.hade@cityofloveland.org](mailto:alison.hade@cityofloveland.org)  
[www.cityofloveland.org/communitypartnership](http://www.cityofloveland.org/communitypartnership)



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## EXECUTIVE SUMMARY- 91.220(B)

The Annual Action Plan is a one-year plan describing how the City of Loveland intends to spend CDBG funds during the time period of **October 1, 2012 through September 30, 2013**.

The objectives and outcomes identified in the 2012 Annual Action Plan are to address creating a **suitable living environment** and **decent housing** by **increasing availability, affordability and sustainability** for **persons with low to moderate incomes**. Specific proposed outcomes and objectives for 2012-2013 that reflect the 5-year Consolidated Plan objectives listed under ALLOCATION PRIORITIES on Page 19 are:

<b>HUD-Defined Outcomes &amp; Objectives</b>	<b>One Year Proposed Outcomes from Activities</b>
Increase availability of decent housing	Purchase land on which to build 30 permanently low-income apartments.
Increase sustainability of decent housing	Rehabilitate the sidewalks surrounding 16 low-income apartments.
Increase sustainability of decent housing	Emergency funding for 20 homeowners with low to moderate income to maintain units as safe and decent.
Increase sustainability of decent housing	Low interest loans to three homeowners with low to moderate income to maintain units as safe and decent.
Increase affordability of decent housing	Down payment assistance for four households with low to moderate income.
Increase affordability of decent housing	Purchase 12 lots for construction of new affordable single family housing.
Increase sustainability of decent housing	Minor rehabilitation of 225 homes occupied by seniors living independently and with low to moderate income.
Increase accessibility to suitable living	Case management and shelter for 80 victims of domestic violence.
Increase accessibility to suitable living	Housing counseling provided to 395 households.
Increase accessibility to suitable living	Case management provided to 163 chronically homeless adults.
Increase affordability of decent housing	Rent assistance provided to 818 households.



## **PAST PERFORMANCE - 91.220(B)**

**Many performance outcomes of City of Loveland CDBG sub-recipients have been achieved. Loveland residents with low income received the benefit of new housing, housing rehabilitation, rent assistance, case management and shelter. During the 2011-2012 grant year, CDBG funds were expended to:**

- Rehabilitate the roof and fence at a four-unit complex housing victims of domestic violence (outcome achieved).
- Emergency rehabilitation assistance for five families (3/4 year data; will be 14 families by program year end and the outcome will have been achieved).
- Rehabilitate the gutters at a 20-unit affordable housing apartment complex serving single parents (outcome achieved).
- Provide a low-interest loan for home rehabilitation for one family (3/4 year data; will be 2 families by program year end and the outcome will have been achieved).
- Major rehabilitation of 11 apartments occupied by low income seniors (outcome achieved).
- New windows at a day center facility for homeless families (outcome achieved).
- Minor home rehabilitation in 114 homes owned/occupied by low income seniors (3/4 year data; prorated for full year exceeds outcome by 24%).
- Overnight shelter and case management for 155 chronically homeless adults (exceeds outcome by 29%).
- Case management and shelter for 63 adults and children (3/4 year data; prorated for full year exceeds outcome by 27%).
- Overnight shelter and case management for 29 people (3/4 year data; prorated for full year meets 60% of outcome).
- Rent assistance and housing counseling provided to 445 households (3/4 year data; prorated for full year exceeds number of people served by 31%).

**Specific information regarding prior (full-year) performance is available through the Consolidated Annual Performance Evaluation Report, which can be found at:**

**[www.cityofloveland.org/communitypartnership](http://www.cityofloveland.org/communitypartnership)**



## **CITIZEN PARTICIPATION—91.220(B)**

The citizen participation process was followed in completing the 2012 Annual Action Plan. The City of Loveland consulted with the Loveland Affordable Housing Commission and Human Services Commission (two volunteer City groups that review applications from sub-recipients for CDBG funding), Loveland City Council, and numerous human service agencies that serve lower income populations and Loveland citizens to request that they share the Annual Action Plan with their clients (see partial list of human service agencies on page 23). Efforts to broaden public participation included open meetings of the two Commissions, discussion of the plan at public City Council meetings, public notice in the local newspaper, posting the document on the City's website, posting the document on the Community Partnership Office's Facebook page, making the document available in hard copy form, mailing the document to community members upon request, and providing a Spanish language version upon request. The Annual Action Plan was available for public comment from August 4, 2012 through September 2, 2012.

A public hearing on the use of funds for the 2012 grant year was held on June 5, 2012; Appendix C includes a copy of the City Council Resolution adopting the use of CDBG funding for the grant year. A public hearing on the 2012 Annual Action Plan was held on August 21, 2012 in the Loveland City Council Chambers. A legal notice for this meeting was placed in the local newspaper and can be found in Appendix B.

**A summary of comments or views, and a summary of comments or views not accepted and the reasons therefore are as follows:**



## FINANCIAL RESOURCES - 91.220(c)(1) and (c)(2)

The federal, state, and local resources the jurisdiction expects to receive to address the identified needs are listed below. Federal resources include Section 8 funds made available to the jurisdiction, Low-Income Housing Tax Credits, and competitive funds expected to be available to address priority needs and specific objectives identified in the plan. A brief explanation of how federal funds will leverage resources from private and non-federal public sources is included.

Resource	Estimated Amount	Leverage Additional Funds
2012 City of Loveland CDBG	\$288,239	CDBG funding can be considered local match to obtain other funding for local projects.
Title I/NCLB (received by school district, not city)	\$22,023 (pending)	Thompson School District.
Low Income Housing Tax Credits (applied for by housing developers, not city)	\$5,100,000 (pending)	Creates equity to leverage other resources.
Section 8 Vouchers (made available to the Housing Authority, not to the city)	\$3,780,000	Housing Authority of the City of Loveland resources.
State Division of Housing (applied for by Housing Authority and local non-profits)	\$1,471,300 (pending)	CDBG and other local sources leverage state funds; some funding used for county projects.
City of Loveland Human Services Grant	\$450,000	Private grants.
City of Loveland Fee Waivers	\$533,710	Fee waivers and fee locks for affordable housing projects.
Private Sources (grants, donations, corporate gifts, local fundraising)	\$5,152,193	Additional program funding beyond the resources listed above to provide services in Loveland and Larimer County.
Program income	\$0	The City of Loveland does not currently have program income from any projects.



**ANNUAL OBJECTIVES - 91.220(c)**

Activity	Sub-Recipient Agency	HUD Objective	National Objective	One Year Goal—Proposed Outcome	CDBG \$
Land purchase	ArtSpace Projects	DH-2	LMH	Purchase land for construction of 30 low-income apartments.	\$35,000
Housing rehabilitation	Housing Authority	DH-3	LMH	Rehabilitate the sidewalks surrounding 16 low-income apartments.	\$25,580
Housing rehabilitation	Housing Authority	DH-3	LMH	Low interest loans to homeowners for housing rehabilitation for three households.	\$35,000
Housing rehabilitation	Housing Authority	DH-3	LMH	Emergency funding to 20 homeowners for housing rehabilitation.	\$20,000
Down Payment Assistance	Housing Authority	DH-2	LMH	Down payment assistance for four low and moderate income households.	\$30,000
Land Purchase	Habitat for Humanity	DH-2	LMH	Purchase land for the construction of 12 single family homes.	\$38,000 *
Housing rehabilitation	Volunteers of America	DH-3	LMH	Rehabilitate 225 homes of seniors living independently.	\$16,800
Sub-total capital projects					\$200,380
Homeless case management	House of Neighborly Service	SL-1	LMC	Case management for 163 chronically homeless individuals	\$21,233
Homeless shelter and case management	Crossroads Safehouse	SL-1	LMC	Shelter and case management for 80 victims of domestic violence.	\$2,827
Rent assistance	Neighbor to Neighbor	DH-2	LMC	Rent assistance for 818 family members.	\$10,000
Housing counseling	Neighbor to Neighbor	SL-1	LMC	Housing counseling for 395 family members.	\$9,175
Sub-total public services					\$43,235
Program administration	City of Loveland			Planning and administration	\$57,647
2012 CDBG funds					\$301,262
HUD Defined—Outcome / Objective Codes		Availability / Accessibility		Affordability	Sustainability
<b>Decent Housing</b>		DH-1		DH-2	DH-3
<b>Suitable Living Environment</b>		SL-1		SL-2	SL-3
<b>Economic Opportunity</b>		EO-1		EO-2	EO-3

LMH Low-Mod Housing  
 LMC Low-Mod Clientele

\* This is \$24,977 in 2012 funding and \$13,023 in 2011 funding.



**ANNUAL OBJECTIVES - 91.220(c)(3)**

**Table 3A Summary of Specific Annual Objectives**

Decent Housing with Purpose of New or Improved Availability/Accessibility (DH-1)							
Specific Objective		Source of Funds	Year	Performance Indicators	Expected Number	Actual Number	Percent Completed
DH 1.1	Provide additional transitional housing for the homeless.	CDBG, City, other public and private sources	2010	# of units built	1	0	0%
			2011		1	0	
			2012		1		
			2013		1		
			2014		1		
			<b>MULTI-YEAR GOAL</b>				5
DH 1.2	Build shelter for victims of domestic violence.		2010	# of facilities constructed	1	0	0%
			2011			0	
			2012				
			2013				
			2014				
		<b>MULTI-YEAR GOAL</b>				1	0
DH 1.3	Housing counseling and rent assistance.	2010	# of persons assisted	1,000	1,074	107.4%	
		2011		1,000	1,168	116.8%	
		2012		1,000			
		2013		1,000			
		2014		1,000			
		<b>MULTI-YEAR GOAL</b>				5,000	2,242
DH 1.4	Purchase land to provide affordable housing.	2010	# of units purchased	5	5	100%	
		2011		5	0	0%	
		2012		5			
		2013		5			
		2014		5			
		<b>MULTI-YEAR GOAL</b>				25	5
Decent Housing with Purpose of New or Improved Affordability (DH-2)							
DH 2.1	Build additional affordable senior housing units.	CDBG, City, other public and private sources	2010	# of units built	5	0	0%
			2011		50	0	0%
			2012		5		
			2013		10		
			2014		5		
			<b>MULTI-YEAR GOAL</b>				75
DH 2.2	Down-payment assistance.		2010	# of households	20	3	15%
			2011		20	0	0%
			2012		20		
			2013		20		
			2014		20		
		<b>MULTI-YEAR GOAL</b>				100	3
Decent Housing with Purpose of New or Improved Sustainability (DH-3)							
DH 3.1	Assist seniors in remaining in housing units through housing rehabilitation.	CDBG, City, other public and private sources	2010	# of households served	35	138	394.2%
			2011		35	125	357.1%
			2012		35		
			2013		35		
			2014		35		
			<b>MULTI-YEAR GOAL</b>				175



**Table 3A Summary of Specific Annual Objectives (cont.)**

Decent Housing with Purpose of New or Improved Sustainability (DH-3)									
DH 3.2	Maintain transitional housing for victims of domestic violence.	CDBG, City, other public and private sources	2010	# of units maintained	4	3	75%		
			2011				25%		
			2012						
			2013						
			2014						
			<b>MULTI-YEAR GOAL</b>				4	4	100%
Economic Opportunity with Purpose of New or Improved Availability/Accessibility (EO-1)									
Specific Objective		Source of Funds	Year	Performance	Expected	Actual Number	Percent Completed		
EO 1.1	Shelter homeless individuals, including day and night inclement weather shelter.	CDBG, City, other public and private sources	2010	# of persons served	100	153	153%		
			2011					143%	
			2012						
			2013						
			2014						
			<b>MULTI-YEAR GOAL</b>				500	296	59.2%
EO 1.2	Shelter homeless families.		CDBG, City, other public and private sources	2010	# of families sheltered	18	15	83%	
				2011					144%
				2012					
				2013					
				2014					
		<b>MULTI-YEAR GOAL</b>				90	417	45.6%	
EO 1.3	Provide case management to homeless individuals and families.	CDBG, City, other public and private sources		2010	# of people served	150	144	96%	
				2011					11.3%
				2012					
				2013					
				2014					
			<b>MULTI-YEAR GOAL</b>				750	161	21.5%
EO 1.4	Shelter and case management to homeless veterans and the chronically homeless.		CDBG, City, other public and private sources	2010	# of people served	50	58	116%	
				2011					38%
				2012					
				2013					
				2014					
		<b>MULTI-YEAR GOAL</b>				250	77	30.8%	
EO 1.5	Assist low-income households through public service activities including child care, case management, mental health, health care, services to persons with disabilities and seniors.	CDBG, City, other public and private sources		2010	# of people served	1,000	3,355	335.5%	
				2011					370.6%
				2012					
				2013					
				2014					
			<b>MULTI-YEAR GOAL</b>				5,000	7,061	141.2%
EO 1.6	Provide facilities that service needs of low income persons in Loveland.		CDBG, City, other public and private sources	2010	# of facilities	2	0	0%	
				2011					50%
				2012					
				2013					
				2014					
		<b>MULTI-YEAR GOAL</b>				2	1	50%	



**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Affordable housing rehabilitation for owner/occupied households below 80% AMI

**Project**

Property rehabilitation

**Activity**

Low interest loans to homeowners for housing rehabilitation.

**Description**

Rehabilitate owner/occupied homes of households with income below 80% AMI.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area:**

**(Street Address):**            To Be Determined  
**(City, State, Zip Code):**    Loveland, Colorado

Specific Objective Number DH-3	Project ID TBD by IDIS
HUD Matrix Code 14A	CDBG Citation 570.202(a)(1)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 3
Local ID 11-LHIP	Units Upon Completion 3

**Funding Sources:**

CDBG	35,000
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	687,000
<b>Total</b>	<b>722,000</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Emergency affordable housing rehabilitation for owner/occupied households below 80% AMI

**Project**

Property rehabilitation

**Activity**

Emergency funding for housing rehabilitation

**Description**

Rehabilitate owner/occupied homes of households with income below 80% AMI.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area:**

**(Street Address):**            To Be Determined  
**(City, State, Zip Code):**    Loveland, Colorado

Specific Objective Number DH-3	Project ID TBD by IDIS
HUD Matrix Code 14A	CDBG Citation 570.202(a)(1)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 20
Local ID 12-LHIP EM	Units Upon Completion 20

**Funding Sources:**

CDBG	20,000
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	_____
<b>Total</b>	<b>20,000</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Down payment assistance for households below 80% AMI

**Project**

Direct homeownership assistance

**Activity**

Downpayment assistance for low/moderate income households.

**Description**

Provide down payment assistance to households with income below 80% AMI.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity

**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area:**

**(Street Address):**            To Be Determined

**(City, State, Zip Code):**    Loveland, Colorado

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 13	CDBG Citation 570.201(3)(n)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 4
Local ID 12-LHOP	Units Upon Completion 4

**Funding Sources:**

CDBG	30,000
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	473,200
<b>Total</b>	<b>503,200</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Sustainable, affordable housing for low-income households.

**Project**

Housing rehabilitation

**Activity**

Apartment housing rehabilitation for low/moderate income housing.

**Description**

Rehabilitation of the sidewalks surrounding the Cornerstone apartments.

**Objective category:**     Suitable Living Environment     Decent Housing             Economic Opportunity

**Outcome category:**     Availability/Accessibility             Affordability             Sustainability

**Location/Target Area:**            Cornerstone Apartment Homes

**(Street Address):**                    1345 East 7<sup>th</sup> Street

**(City, State, Zip Code):**            Loveland, Colorado 80537

Specific Objective Number DH-3	Project ID TBD by IDIS
HUD Matrix Code 14B	CDBG Citation 570.202(b)(11)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 16
Local ID 12-Corner	Units Upon Completion 16

**Funding Sources:**

CDBG	25,580
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	_____
<b>Total</b>	<b>25,580</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Sustainable, affordable housing for seniors with low income

**Project**

Housing rehabilitation

**Activity**

Rehabilitate homes, including making homes more accessible, for seniors

**Description**

Provide minor safety rehabilitation in homes of seniors with low income living independently.

**Objective category:**     Suitable Living Environment     Decent Housing             Economic Opportunity

**Outcome category:**     Availability/Accessibility             Affordability             Sustainability

**Location/Target Area:**

**(Street Address):**                    To Be Determine

**(City, State, Zip Code):**            Loveland, Colorado

Specific Objective Number DH-3	Project ID TBD by IDIS
HUD Matrix Code 14A	CDBG Citation 570.202(a)(1)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 225
Local ID 12-VOA	Units Upon Completion 225

**Funding Sources:**

CDBG	16,800
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	36,608
<b>Total</b>	<b>53,408</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**                      City of Loveland

**Priority Need**

Affordable for-sale housing for low to moderate income households

**Project**

Property acquisition

**Activity**

Purchase land on which to build homes.

**Description**

Purchase 12 lots to build new affordable homes to be sold to households at or below 60% AMI

**Objective category:**     Suitable Living Environment     Decent Housing                       Economic Opportunity  
**Outcome category:**     Availability/Accessibility                       Affordability                       Sustainability

**Location/Target Area:**

**(Street Address):**    To Be Determined  
**(City, State, Zip Code):**                                      Loveland, Colorado

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 01	CDBG Citation 570.201(a)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Housing units	Annual Units 12
Local ID 12-HFH	Units Upon Completion 12

**Funding Sources:**

CDBG	38,000 *
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	442,000
Total	480,000 *Note that 13,023 of \$38,000 is from 2011-2012 program year.

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Case management and supportive services for homeless adults

**Project**

Public services

**Activity**

Case management for persons who are homeless.

**Description**

Operation of 137 Connect, the day shelter for homeless individuals managed by House of Neighborly Service.

**Objective category:**     Suitable Living Environment     Decent Housing             Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability             Sustainability

**Location/Target Area:**

**(Street Address):**            137 So. Lincoln Avenue  
**(City, State, Zip Code):**    Loveland, Colorado 80537

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 05	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Persons Served	Annual Units 163
Local ID 12-HNS	Units Upon Completion 163

**Funding Sources:**

CDBG	21,233
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	72,962
Total	94,195
	_____

The primary purpose of the project is to help:  the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Affordable housing for low and moderate income households

**Project**

Rent assistance

**Activity**

Rent assistance provided by HUD-certified Neighbor to Neighbor counselors.

**Description**

Provide rent assistance and housing counseling by HUD-certified counselors.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area:**

**(Street Address):**            565 Cleveland Ave  
**(City, State, Zip Code):**    Loveland, Colorado 80537

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 05S	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Persons Served	Annual Units 818
Local ID 12-N2N RA	Units Upon Completion 818

**Funding Sources:**

CDBG	10,000
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	83,500
Total	93,500

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**            City of Loveland

**Priority Need**

Case management for low and moderate income households

**Project**

Housing counseling

**Activity**

Housing counseling provided by HUD-certified Neighbor to Neighbor counselors.

**Description**

Provide housing counseling by HUD-certified counselors.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area:**

**(Street Address):**            565 Cleveland Ave  
**(City, State, Zip Code):**    Loveland, Colorado 80537

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 05U	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Persons Served	Annual Units 395
Local ID 12-N2N HC	Units Upon Completion 395

**Funding Sources:**

CDBG	<u>9,175</u>
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	<u>92,642</u>
Total	<u>101,817</u>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**                      City of Loveland

**Priority Need**

Case management and shelter for victims of domestic violence

**Project**

Public services

**Activity**

Case management and shelter for victims of domestic violence

**Description**

Operation of domestic violence shelter, which is generally the most available for Loveland victims of domestic violence.

**Objective category:**     Suitable Living Environment     Decent Housing                       Economic Opportunity  
**Outcome category:**     Availability/Accessibility                       Affordability                       Sustainability

**Location/Target Area:**

**(Street Address):**                      P.O. Box 993  
**(City, State, Zip Code):**              Fort Collins, Colorado 80522

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 05G	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2012	Completion Date (mm/dd/yyyy) 9/30/2013
Performance Indicator Persons Served	Annual Units 80
Local ID 12-CS	Units Upon Completion 80

**Funding Sources:**

CDBG	<u>2,827</u>
ESG	_____
HOME	_____
HOPWA	_____
Total Formula	_____
Prior Year Funds	_____
Assisted Housing	_____
PHA	_____
Other Funding	<u>1,325,536</u>
Total	<u>1,328,363</u>

The primary purpose of the project is to help:  the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs



## **GEOGRAPHIC DISTRIBUTION 91.220(F)**

The map on the following page shows the location of the CDBG-funded projects with a physical office within city limits. The City of Loveland does not limit the use of CDBG funds to any specific geographic location within the city, or to any specific groups based on race, minority or ethnic concentration. Instead, all funds are used to serve persons with low to moderate income who live within the Loveland city limits.

### **CONCENTRATION OF MINORITY OR LOW INCOME HOUSEHOLDS**

Areas of low income families are more prevalent in the central/downtown section of the city, which provides easier access to service providers. The most diverse areas of Loveland are also centrally located. Although these areas exist, as noted, the City of Loveland does not allocate CDBG funds based on ethnicity, race, or geographic location.

**ALLOCATION PRIORITIES** are based on need, income level of persons served, and whether or not a proposed activity meets one of the **objectives outlined in the 5-Year Consolidated Plan**, which are to:

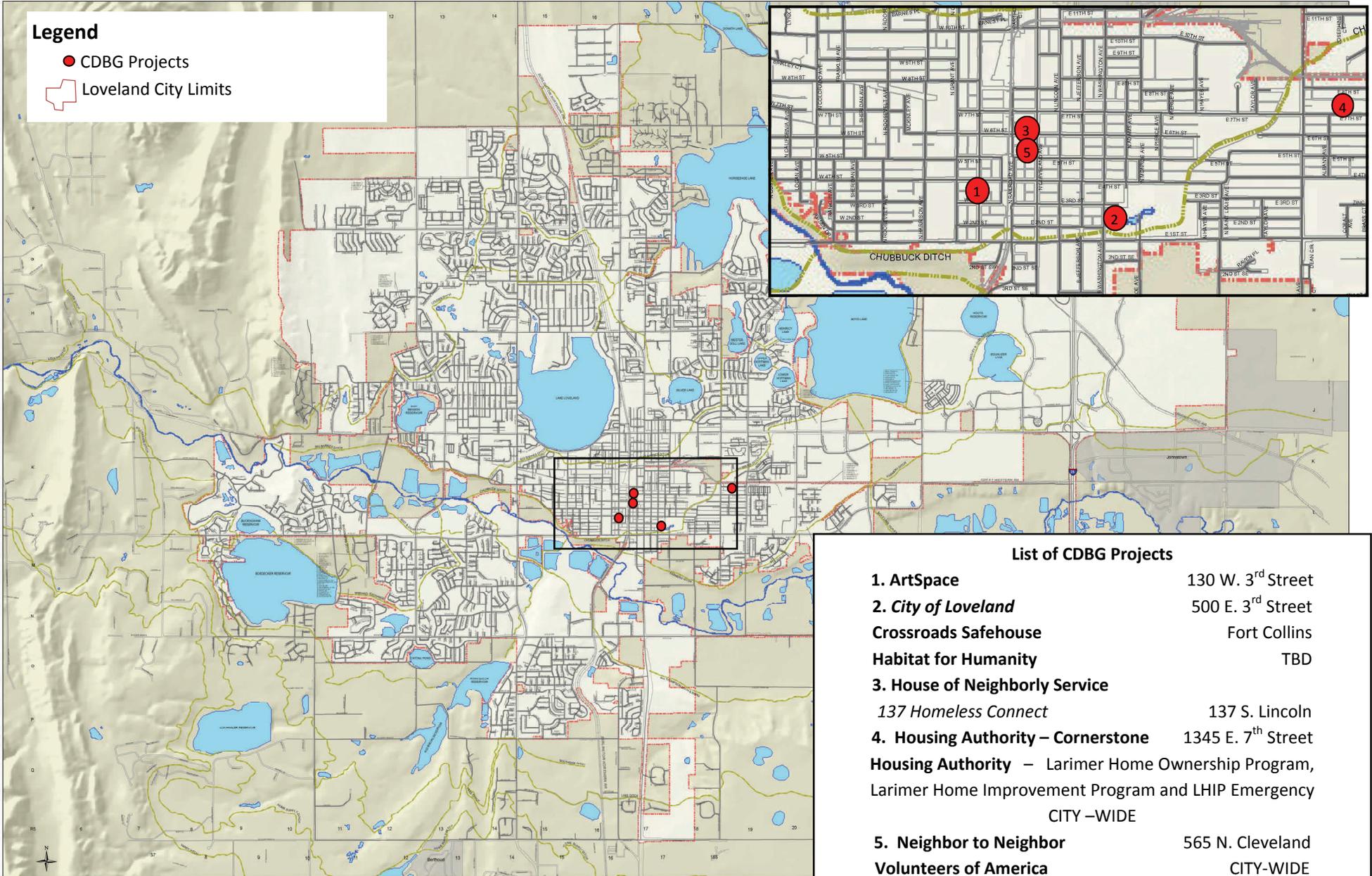
1. Provide services to homeless and nearly homeless persons including shelter, case management, transitional and permanent housing.
2. Create and rehabilitate housing for households with low income, giving funding priority to activities that serve households with income below 50% of the area median income.
3. Decrease poverty in the community by financially supporting services and facilities that meet basic needs and provide self-sufficiency opportunities.

All CDBG funds received from HUD during the 2010-2015 timeframe will be used to address at least one of the priority needs categories listed above

**OBSTACLES** to meeting underserved needs include, but are not limited to:

- A vacancy rate below 4% in Loveland and 3% in Larimer County, coupled with increasing rents, puts additional pressure on low-income housing.
- An increase in the number of chronically homeless individuals in Loveland. A count for the time period of 11/1/11 through 3/31/12 shows 685 literally homeless individuals and 516 at imminent risk of homelessness. Loveland is currently without an overnight shelter for those in need.
- The CPO grants all CDBG funding to non-profits; projects are never completed in-house. While the CPO office can support projects, our limited funding will not ensure a final result.

City Limits Revised: February, 2012



**Loveland Annual Action Plan 2012-2013  
Community Development Block Grant Projects**





## ANNUAL AFFORDABLE HOUSING GOALS 91.220(G)

**Table 3B Summary of Specific Annual Objectives**

Grantee Name: City of Loveland Program Year: 2011-2012	Expected Annual Number of Units To Be Completed	Actual Annual Number of Units Completed	Resources used during the period			
			CDBG	HOME	ESG	HOPWA
<b>BENEFICIARY GOALS (Sec. 215 Only)</b>						
Homeless households	30	4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-homeless households	458	471	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special needs households	125	125	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Total Sec. 215 Beneficiaries*</b>	613	600	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>RENTAL GOALS (Sec. 215 Only)</b>						
Acquisition of existing units	0	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Production of new units	0	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Rehabilitation of existing units	102	35	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rental Assistance	450	445	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<b>Total Sec. 215 Affordable Rental</b>	552	480	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>HOME OWNER GOALS (Sec. 215 Only)</b>						
Acquisition of existing units	1	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Production of new units	7	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Rehabilitation of existing units	50	120	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Homebuyer Assistance	3	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<b>Total Sec. 215 Affordable Owner</b>	61	120	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>COMBINED RENTAL AND OWNER GOALS (Sec. 215 Only)</b>						
Acquisition of existing units	1	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Production of new units	7	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Rehabilitation of existing units	152	155	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rental Assistance	450	445	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Homebuyer Assistance	3	0	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<b>Combined Total Sec. 215 Goals*</b>	613	600	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>OVERALL HOUSING GOALS (Sec. 215 + Other Affordable Housing)</b>						
Annual Rental Housing Goal	552	480	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



## **PUBLIC HOUSING – 91.220(H)**

The Housing Choice Voucher program is administered by the Housing Authority of the City of Loveland (HACOL). Therefore, the City of Loveland is not directly involved in encouraging residents to become involved in programming or in participating in homeownership. During the 2012-2013 CDBG grant year, funds will be used to support programs offered by HACOL, including down payment assistance for homeownership. HACOL has not been designated as “troubled” by HUD.

## **HOMELESS AND SPECIAL NEEDS - 91.220(I)**

**The City of Loveland’s plan for the investment and use of available resources and specific planned actions over the next year aimed at eliminating chronic homelessness are:**

- Use of CDBG funds to retain a case manager to work with chronically homeless persons.
- Use of CDBG funds to pay for case management at a domestic violence shelter.
- Work with local non-profits and the Loveland Homeless Task force to produce LOVELAND HOMELESS CONNECT on November 2, 2012, a one-day event designed to provide resources and support to homeless and nearly homeless individuals and families in Loveland.
- Discussions on a City-wide basis, including elected officials, business members, and concerned citizens, to produce a strategic plan to more thoroughly address homelessness locally.

## **SPECIFIC ACTION STEPS TO ADDRESS THE NEEDS OF PERSONS WHO ARE NOT HOMELESS IDENTIFIED IN ACCORDANCE WITH 91.215(E) ARE TO EXPEND CDBG FUNDS TO:**

- Provide emergency funding to rehabilitate homes to maintain them as decent and safe.
- Provide rent assistance and housing counseling to help community members avoid homelessness by retaining their homes.
- Rehabilitate existing housing by providing low interest loans to homeowners with low to moderate income.
- Upgrade existing affordable rental housing for persons who are frail, elderly, disabled or have special needs.
- Provide down payment assistance to help low to moderate income families purchase a home.



## HOMELESSNESS PREVENTION

Other planned action steps over the next year to address individuals and families with children at imminent risk of becoming homeless are to invest City of Loveland Human Services Grant Funds into the following services to specifically help maintain financial stability and housing:

<b>AGENCY</b>	<b>SERVICE</b>
Alternatives to Violence	Transitional housing for domestic violence victims
Boys & Girls Club	Youth programs and child care
Center for Adult Learning	Adult education and job skills
Community Kitchen	Daily meal program
Food Bank for Larimer County	Food distribution and prepared meals for children
House of Neighborly Service	Food, clothing, medical assistance
Matthews House	Life skills for youth aging out of foster care
Meals on Wheels	Meal distribution program
Neighbor to Neighbor	Foreclosure prevention
Northern Colorado AIDS Project	Food and shelter assistance, mental health services for people living with HIV/AIDS
Project Self-Sufficiency	Single parent family housing and case management
Respite Care	Child care services
Thompson Valley Preschool	Preschool
Touchstone Health Partners	Mental health services
United Way 2-1-1	Information & Referral Services



## **BARRIERS TO AFFORDABLE HOUSING 91.220(J)**

**Actions that will take place during the next year to remove barriers to affordable housing are:**

- Full waiver of building permit fees for housing constructed by Habitat for Humanity purchased with CDBG funding in prior years. Consideration of building permit and development fee waivers for other builders and developers of qualified affordable housing.
- Credit of city use tax to all builders of affordable housing units.
- Create additional incentives for developers and builders to create affordable rental and for-sale housing through fee waivers or a density bonus program.
- Propose a city sponsored fund for rehabilitation of affordable housing.
- Specific CDBG-funded activities listed in this Action Plan.

## **OTHER ACTIONS 91.220(K)**

**Actions that will take place during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce the number of housing units containing lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private agencies are listed below:**

- The City of Loveland will continue to partner with the United Way of Larimer County on the Loveland Alliance of Non-profits to provide a venue for education, communication, collaboration, and coordination between public and private agencies, almost all of which serve low-income persons.
- The City of Loveland will provide grant funding in the amount of \$450,000 to assist non-profit organizations serving persons with low income, including programs that provide food, shelter, physical and mental health care, case management, housing, housing counseling, education and child care.
- The City of Loveland will help foster and maintain affordable housing by investing CDBG in housing rehabilitation and purchase. Additionally, the City will waive permit fees for houses constructed by Habitat for Humanity and will consider additional fee waivers for other builders of affordable units.
- The City of Loveland will assist in reducing the number of housing units containing lead-based paint (LBP) by requiring that all activities funded with CDBG dollars comply with federal LBP regulations; LBP reduction regulations are incorporated into all legal agreements between the city and sub-recipients.
- The City of Loveland Affordable Housing Commission has developed four objectives aimed at reducing poverty, including a strategic plan to address transitional housing and shelter for homeless youth, incentivize developers to create affordable housing, and propose a city sponsored fund to rehabilitate currently affordable housing.



**Actions to coordinate housing strategy with local and regional transportation planning strategies to ensure, to the extent practicable, that residents of affordable housing have access to public transportation include:**

- Meetings with the Director of Public Works to discuss bus routes and subsidized bus passes for low income residents.
- Coordination of information between the Development Services and Transportation departments.
- Encouraging new affordable housing development near major transportation corridors.
- The City of Loveland provides bus tokens to local non-profits to distribute to their clients in need of subsidized transportation.
- A local non-profit has taken on the burden of screening clients for other agency programs, such as food stamps (county) and housing (housing authority) to limit the need of clients to travel to multiple destinations.

**PROGRAM SPECIFIC REQUIREMENTS - 91.220(I)(1)**

- A. No program income is expected to be received during the program year. No program income was received in the preceding program year.
  - B. No proceeds from Section 108 loan guarantees will be used during the year to address priority needs and specific objectives identified in the strategic plan.
  - C. No surplus funds from any urban renewal settlement for community development and housing activities will be used during the year.
  - D. No grant funds have been returned to the line of credit for which the planned use has not been included in a prior statement or plan.
  - E. No income will be received from float-funded activities.
- iii. No urgent need activities will be funded.

## **FAIR HOUSING AND ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING**

As described in the City of Loveland 2010-2015 Consolidated Plan, and as part of the City of Loveland's certification to affirmatively further fair housing, the City assumes the responsibility of fair housing by conducting an Analysis of Impediments to Fair Housing Choice (AI) and by taking appropriate actions to overcome the effects of any impediments identified by the analysis. The City of Loveland updated the Analysis of Impediments to Fair Housing Choice in August of 2007. This document is in the process of a complete update and will be submitted to the Office of Fair Housing before the end of 2012. A copy of the current analysis is available online at: <http://www.cityofloveland.org/index.aspx?page=901>

According to the City of Loveland 2007 Analysis of Impediments to Fair Housing, development related standards, review process and fees have been identified as barriers to the construction of affordable housing. These elements can add to the cost of development and construction, making them less affordable to residents. The City's strategy to remove barriers in order to provide incentives to developers and builders of affordable housing includes use tax credits and waiver or reduction of development fees, infrastructure, capital expansion, inspection, and building permit fees. Additionally, the Loveland Affordable Housing Commission is charged with reviewing existing policies and making recommendations to the Loveland City Council regarding strategies to reduce regulatory barriers for affordable housing. The commission is currently considering a density bonus policy as one option to increase affordable housing development.

The City of Loveland Community Partnership Office investigates all suggestions of discrimination or barriers to fair housing. A survey that was recently conducted as part of the AI update asked questions about filing a fair housing complaint, such as: 1) Have you ever been denied housing in Loveland for any of the following reasons (race, color, national origin, family size, disability or religion); 2) Did you file a housing discrimination complaint (yes/no); 3) What happened with your complaint; 4) If you did not file, why not? Respondents were given the opportunity to provide their name and phone number and a Community Partnership Office employee will follow-up with everyone who provided information and will assist with filing a complaint if necessary.

## **MONITORING**

Sub-recipients of Community Development Block Grant (CDBG) funds must enter into a legal agreement with the City of Loveland specifying how and when grant funds will be spent. The city does not disburse payment to grant recipients until a contract has been executed. Each recipient must provide quarterly progress reports to provide proof of performance.

To further describe the City of Loveland monitoring plan and to comply with monitoring responsibilities of sub-recipient projects, the following will be applied.

- Each recipient must submit a final report when grant year funds have been fully expended. The report must contain information on activities for which program funds were used, the number of people served, demographics of people served, and the source and amount of other program funds. This information is entered into the IDIS system for project monitoring.
- Annually, the city selects grant recipients for a full monitoring process, including a site-visit, to ensure that CDBG funds are used to assist low to moderate income persons, and that funding used to provide low-income housing is specific to homes that are occupied by low and moderate income households. A check list is completed during the site visit to address program regulations and requirements. This monitoring process includes ensuring that administrative, programmatic, and financial performance is in compliance, and that the project is adequately documented.
- If it is determined that the sub-recipient has not met a requirement of the CDBG program, the City of Loveland will provide written notice of this determination and give the sub-recipient an opportunity to demonstrate within a stated time frame that it has done so. If the sub-recipient is unable to demonstrate compliance, the City of Loveland will begin by providing technical assistance. If the sub-recipient is still unable to resolve any compliance issues, the City of Loveland will take corrective or remedial action. Said action will be designed to prevent a continuation of the deficiency, or mitigate, to the extent possible, any adverse effects or consequences, and prevent any reoccurrence.

The City of Loveland provides the U.S. Department of Housing and Urban Development with monitoring information to ensure program compliance with 24 CFR 91.520, to include the following:

- Quarterly and final reports received from sub-recipients are thoroughly reviewed for completeness and to ensure that the grant serves low to moderate income residents. Project documentation includes the racial and ethnic status of persons assisted and actions that affirmatively further fair housing.
- Progress toward the City of Loveland annual strategic plan is documented, including resources made available to the project.
- Project information is submitted to HUD within 90 days after the close of the program year, and includes progress toward the City's objective of providing affordable housing, including the number and types of families served based on income level.
- The use of CDBG funds during any program year are assessed against priorities and specific objectives identified in the Consolidated and Annual Action Plans.



## **APPENDICES**

**A: 2012 AREA MEDIAN INCOME CHART**

**B: AFFIDAVIT OF PUBLICATION**

**C: CITY COUNCIL RESOLUTION**

**D: CERTIFICATIONS**

**E: APPLICATION FOR FEDERAL ASSISTANCE SF-424**



## APPENDIX A

### 2012 AREA MEDIAN INCOME CHART

#### 2012 HUD Income Guidelines

#### Loveland - Ft Collins Metropolitan Statistical Area

Issued December 2011

# persons in household	1	2	3	4	5	6	7	8
100% Area Median Income	\$54,400	\$62,200	\$70,000	\$77,700	\$84,000	\$90,200	\$96,400	\$102,600
80%	\$43,550	\$49,750	\$55,950	\$62,150	\$67,150	\$72,100	\$77,100	\$82,050
75%	\$40,800	\$46,650	\$52,500	\$58,275	\$63,000	\$67,650	\$72,300	\$76,950
70%	\$38,080	\$43,540	\$49,000	\$54,390	\$58,800	\$63,140	\$67,480	\$71,820
60%	\$32,640	\$37,320	\$42,000	\$46,620	\$50,400	\$54,120	\$57,840	\$61,560
50%	\$27,200	\$31,100	\$35,000	\$38,850	\$42,000	\$45,100	\$48,200	\$51,300
40%	\$21,760	\$24,880	\$28,000	\$31,080	\$33,600	\$36,080	\$38,560	\$41,040
30%	\$16,350	\$18,650	\$21,000	\$23,300	\$25,200	\$27,050	\$28,900	\$30,800



## **APPENDIX B**

### **AFFIDAVIT OF PUBLICATION**

See Following Page

# AFFIDAVIT OF PUBLICATION REPORTER-HERALD

State of Colorado  
County of Larimer

I, the undersigned agent, do solemnly swear that the LOVELAND REPORTER-HERALD is a daily newspaper printed, in whole or in part, and published in the City of Loveland, County of Larimer, State of Colorado, and which has general circulation therein and in parts of Larimer and Weld counties; that said newspaper has been continuously and uninterruptedly published for a period of more than six months next prior to the first publication of the annexed legal notice of advertisement, that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any, amendments thereof, and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado; that a copy of each number of said newspaper, in which said notice of advertisement was published, was transmitted by mail or carrier to each of the subscribers of said newspaper, according to the accustomed mode of business in this office.

The annexed legal notice or advertisement was published in the regular and entire edition of said daily newspaper once; and that one publication of said notice was in the issue of said newspaper dated August 3, 2012.

Karan Janant  
Agent

Subscribed and sworn to before me this 3rd day of August, 2012 in the County of Larimer, State of Colorado.

Alfred J. Ripavay  
Notary Public

Fee \$30.60  
Account #222255  
Ad #5562103



MY COMMISSION EXPIRES  
APRIL 30, 2013

### TO ALL LOVELAND CITIZENS AND INTERESTED PARTIES: NOTICE OF PUBLIC HEARING & AVAILABILITY OF DOCUMENT FOR REVIEW

The City of Loveland has completed the 2012 Annual Action Plan for use of federal Community Development Block Grant (CDBG) funds.

It is anticipated that \$288,239 in FY2012 CDBG funds will be received by the City of Loveland from the U.S. Department of Housing and Urban Development (HUD). The City has continued its commitment to assist low and moderate income individuals and families by utilizing 100% of the block grant funds to serve low and moderate income households and individuals. Funds will be used to address three goals as identified in the 2010 - 2015 Consolidated Plan:

- 1) Provide services to homeless and nearly homeless persons including shelter, case management, transitional and permanent housing.
- 2) Create and maintain housing for households with low income. Give funding priority to activities that serve households with income below 50% of the area median income.
- 3) Decrease poverty in the community by financially supporting services and facilities that meet basic needs and provide self-sufficiency opportunities.

A public hearing on the 2012 Annual Action Plan will be held on Tuesday, August 21, 2012 at 6:30 p.m. in the Loveland City Council Chambers located at 500 East Third Street. Special accommodations for persons with disabilities will be provide upon request.

Loveland's 2012 Annual Action Plan is available to the public for examination from August 4, 2012 through September 2, 2012 at the City of Loveland Community Partnership Office, 500 E. Third Street or at [www.cityofloveland.org/communitypartnership](http://www.cityofloveland.org/communitypartnership). Any comments or questions regarding the plan should be directed in writing to the City of Loveland Community Partnership Office, 500 E. Third Street, 962-2517, 8:00 a.m. to 5:00 p.m., Monday - Friday, or via e-mail at [alison.hade@cityofloveland.org](mailto:alison.hade@cityofloveland.org).

Published: Loveland  
Reporter-Herald  
on August 3, 2012,  
Ad #5562103



## **APPENDIX C**

### **CITY COUNCIL RESOLUTION**

See Following Page

**RESOLUTION #R-45-2012****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING THE 2012 GRANT FUNDING RECOMMENDATIONS OF THE LOVELAND HUMAN SERVICES COMMISSION AND THE LOVELAND AFFORDABLE HOUSING COMMISSION**

**WHEREAS**, the City of Loveland, Colorado recognizes the valuable services provided by human services agencies in the Loveland community; and

**WHEREAS**, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

**WHEREAS**, the City has established the Human Services Grant Program to provide financial assistance to agencies meeting the human services needs in the community; and

**WHEREAS**, the City has budgeted \$450,000 in the 2012 City of Loveland budget for the Human Services Grant Program; and

**WHEREAS**, the City receives federal Community Development Block Grant funds through the U.S. Department of Housing and Urban Development to assist in meeting the housing needs for Loveland citizens with low incomes; and

**WHEREAS**, the City anticipates receiving a total of \$288,239 in Community Development Block Grant funds for the 2012-2013 federal fiscal year; and

**WHEREAS**, the City Council has charged the Human Services Commission with the task of reviewing all grant applications made to the City for Human Services Grant funds and for Community Development Block Grant funds, except for “bricks and mortar” applications that are housing related, and making a funding recommendation to the City Council regarding such grant funds distribution; and

**WHEREAS**, the City Council has charged the Affordable Housing Commission with the task of reviewing all “bricks and mortar” grant applications made to the City for Community Development Block Grant funds related to housing and making a recommendation to the City Council regarding such grant funds distribution; and

**WHEREAS**, the Human Services Commission and the Affordable Housing Commission have reviewed all grant applications made to the City for Human Services Grant funds and Community Development Block Grant funds, and have made a recommendation to the City Council regarding distribution of those grant funds; and

**WHEREAS**, the City Council desires to approve the grant funding recommendations of the Human Services Commission and the Affordable Housing Commission.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the 2012 grant funding recommendations of the Human Services Commission regarding the distribution of Human Services Grant funds are hereby approved in the following amounts to the following agencies, subject to execution of a recipient contract with the City of Lovland by the agency on or before August 31, 2012:

<b>Agency</b>	<b>Total Grant Amount</b>
Alliance for Suicide Prevention	\$2,590
Alternatives to Violence	\$38,907
Boys & Girls Club	\$28,255
Center for Adult Learning	\$21,083
Community Kitchen	\$6,577
Court Appointed Special Adv.	\$13,585
Crossroads Safehouse	\$18,035
Disabled Resource Services	\$14,598
Elderhaus	\$13,792
Food Bank for Larimer County	\$23,414
House of Neighborly Service	\$54,096
Larimer Center for Mental Health (Touchstone)	\$24,503
Larimer Center for Mental Health/Loveland Community Health Center – Model Partnership	\$10,000
Larimer County Partners	\$5,212
Matthews House	\$21,335
Meals on Wheels	\$29,895
Northern Colorado AIDS Project	\$5,711
Project Self-Sufficiency	\$12,648
Rehab and Visiting Nurses Assoc	\$15,253
Respite Care	\$12,071
Senior Alternatives in Transp.	\$6,260
Thompson R2J	\$7,875
Thompson Valley Preschool	\$10,829
Turning Point Center	\$14,334
United Way 2-1-1	\$3,056
WINGS	\$10,471
Women’s Resource Center	\$25,615
<b>Total Grant Amount</b>	<b>\$450,000</b>

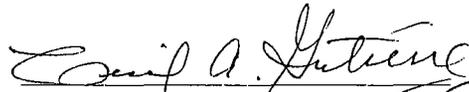
**Section 2.** That the 2012 grant funding recommendations of the Human Services Commission and the Affordable Housing Commission for the 2012 Community Development

Block Grant Program are hereby approved in the following amounts to the following agencies, subject to: (a) the approval of the U.S. Department of Housing and Urban Development and the allocation and receipt of Community Development Block Grant funds to the City of Loveland in 2012; (b) City Council budget and appropriation of such allocated federal funding; and (c) execution of a subrecipient contract with the City of Loveland by the agency or project owner on or before December 31, 2012:

Agency	Total Grant Amount
ArtSpace	\$35,000
Crossroads Safehouse	\$2,827
Habitat for Humanity	\$24,977
House of Neighborly Service	\$21,233
Housing Authority of the City of Loveland	\$110,580
Neighbor to Neighbor	\$19,175
Volunteers of America	\$16,800
City of Loveland Program Administration	\$57,647
Total Grant Amount	\$288,239

**Section 3.** That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5<sup>th</sup> day of June, 2012.

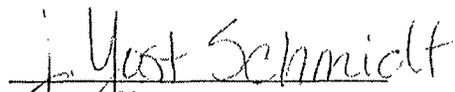
  
 Cecil A. Gutierrez, Mayor

ATTEST:

  
 Susan H. Andrews  
 City Clerk



APPROVED AS TO FORM:

  
 J. Yost Schmidt  
 Deputy City Attorney



## **APPENDIX D CERTIFICATIONS**

See Following Page

## LOCAL GOVERNMENT CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing** -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan** -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Drug Free Workplace** -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about -
  - (a) The dangers of drug abuse in the workplace;
  - (b) The grantee's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -
  - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

**Anti-Lobbying --** To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction --** The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan --** The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3 --** It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

William D. Cahill      7/6/12  
 Signature/Authorized Official      Date

City Manager

\_\_\_\_\_

Title

### Specific CDBG Certifications

The Entitlement Community certifies that:

**Citizen Participation** -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

**Community Development Plan** -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

**Following a Plan** -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

**Use of Funds** -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2012-2013, (a period specified by the grantee consisting of: (1) one, (2) two, or (3) three (circle # of year(s) specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;
3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

**Excessive Force** -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

**Compliance With Anti-discrimination laws** -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

**Lead-Based Paint** -- Its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K and R, of title 24;

**Compliance with Laws** -- It will comply with applicable laws.

Williamto Cairns      7/6/12  
 Signature/Authorized Official      Date

City Manager

\_\_\_\_\_  
Title

**OPTIONAL CERTIFICATION  
CDBG**

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

William D. Calvey      7/6/12  
Signature/Authorized Official      Date

City Manager

\_\_\_\_\_  
Title

## APPENDIX TO CERTIFICATIONS

### INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

#### A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies. (This is the information to which jurisdictions certify).
4. For grantees who are individuals, Alternate II applies. (Not applicable jurisdictions.)
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

500 East Third Street  
 Loveland, Colorado 80537

Check \_\_\_ if there are workplaces on file that are not identified here.

The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

9. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C.812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).



## **APPENDIX E**

### **APPLICATION FOR FEDERAL ASSISTANCE SF-424**

See Following Page

<b>Application for Federal Assistance SF-424</b>		Version 02
*1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	*2. Type of Application    * If Revision, select appropriate letter(s) <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation            *Other (Specify) <input type="checkbox"/> Revision                    _____	
3. Date Received:		4. Applicant Identifier: 84-6000609
5a. Federal Entity Identifier:		*5b. Federal Award Identifier:
<b>State Use Only:</b>		
6. Date Received by State:		7. State Application Identifier:
<b>8. APPLICANT INFORMATION:</b>		
*a. Legal Name: City of Loveland		
*b. Employer/Taxpayer Identification Number (EIN/TIN): 84-6000609		*c. Organizational DUNS: 076481407
<b>d. Address:</b>		
*Street 1:	<u>500 East Third Street</u>	
Street 2:	<u>Suite 210</u>	
*City:	<u>Loveland</u>	
County:	_____	
*State:	<u>CO</u>	
Province:	_____	
*Country:	<u>USA</u>	
*Zip / Postal Code	<u>80537</u>	
<b>e. Organizational Unit:</b>		
Department Name: Development Services		Division Name: Community Partnership Office
<b>f. Name and contact information of person to be contacted on matters involving this application:</b>		
Prefix: <u>Ms</u>	*First Name: <u>Alison</u>	
Middle Name: _____		
*Last Name: <u>Hade</u>		
Suffix: _____		
Title: Community Partnership Administrator		
Organizational Affiliation: City of Loveland		
*Telephone Number: 970-962-2517		Fax Number: 970-962-2903
*Email: alison.hade@cityofloveland.org		

<b>Application for Federal Assistance SF-424</b>	Version 02
<b>*9. Type of Applicant 1: Select Applicant Type:</b> C. City or Township Government  Type of Applicant 2: Select Applicant Type:  Type of Applicant 3: Select Applicant Type:  *Other (Specify)	
<b>*10 Name of Federal Agency:</b> US Department of Housing and Urban Development	
<b>11. Catalog of Federal Domestic Assistance Number:</b> 14.218  CFDA Title: Community Development Block Grant	
<b>*12 Funding Opportunity Number:</b>     <b>*Title:</b>  	
<b>13. Competition Identification Number:</b>     <b>Title:</b>  	
<b>14. Areas Affected by Project (Cities, Counties, States, etc.):</b> City of Loveland, Colorado	
<b>*15. Descriptive Title of Applicant's Project:</b> 2012 Annual Action Plan	

<b>Application for Federal Assistance SF-424</b>		Version 02
<b>16. Congressional Districts Of:</b>		
*a. Applicant: CO-004		*b. Program/Project: CO-004
<b>17. Proposed Project:</b>		
*a. Start Date: 10/01/2012		*b. End Date: 09/30/2013
<b>18. Estimated Funding (\$):</b>		
*a. Federal	288,239	
*b. Applicant		
*c. State		
*d. Local		
*e. Other		
*f. Program Income		
*g. TOTAL	288,239	
<b>*19. Is Application Subject to Review By State Under Executive Order 12372 Process?</b>		
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on _____ <input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review. <input checked="" type="checkbox"/> c. Program is not covered by E. O. 12372		
<b>*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)</b>		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)  <input checked="" type="checkbox"/> ** I AGREE  ** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions		
<b>Authorized Representative:</b>		
Prefix: Mr.		*First Name: William
Middle Name: D		
*Last Name: Cahill		
Suffix:		
*Title: City Manager		
*Telephone Number: 970-962-2306		Fax Number:
* Email: bill.cahill@cityofloveland.org		
*Signature of Authorized Representative: 		*Date Signed: 7/6/12



**CITY OF LOVELAND**  
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 6  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Terry Andrews, City Clerk  
**PRESENTER:** Terry Andrews

**TITLE:**

A resolution approving and authorizing the execution of an Intergovernmental Agreement between the City of Loveland and the Larimer County Clerk and Recorder concerning the coordinated mail ballot election to be held on November 6, 2012

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the Resolution as Recommended

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

This is an administrative action. City Council called a Special Election for November 6, 2012, to fill a vacant seat in Ward IV. This election shall be held as a Coordinated Election with Larimer County. This resolution approves the Election Agreement between the City and Larimer County.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Funds are currently allocated to conduct the November 6, 2012 Special Municipal Election

**SUMMARY:**

On July 17, 2012, the City Council adopted Resolution #R-52-2012 authorizing the City Clerk to notify the Larimer County Clerk and Recorder ("County Clerk") of the City's intention to participate in the November 6, 2012 election and to coordinate the City's participation in that election with the County Clerk to fill a vacant seat in Ward IV. The County Clerk has presented the City with an "Intergovernmental Agreement for General Election" with an effective date of

July 27, 2012, a copy of which is attached as Exhibit "A" to the proposed Resolution ("the Election Agreement"). CRS Section 1-7-116(2) provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of the election.

Attached to the agreement (Exhibit A) is an estimate of the cost (\$39,055) for the City to participate in the general election. The registered electors identified in the exhibit (9,885), reflects the total active registered voters in Ward 4 as of July 31, 2012. The County is estimating a 15% increase in registered voters for this election. The cost for the 2012 general election is based on several factors: 1) a general election is based on two distinct processes: permanent mail-in voter and "vote center" 2) fewer communities, districts etc. participating means the cost per voter is higher; and 3) an overall increase in voter registration (the cost will be adjusted to accommodate the increase).

In order for the City to participate in a coordinated election with the County Clerk on November 6, 2012, it is necessary for the City to enter into the Election Agreement.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

Resolution

**RESOLUTION #R-55-2012**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LARIMER COUNTY CLERK AND RECORDER CONCERNING THE COORDINATED GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2012**

**WHEREAS**, on July 17, 2012, the Loveland City Council adopted Resolution #R-52-2012 authorizing the Loveland City Clerk (“City Clerk”) to notify the Larimer County Clerk and Recorder (“County Clerk”) of the City of Loveland’s intention to participate in the November 6, 2012, election and to coordinate the City’s participation in that election with the County Clerk; and

**WHEREAS**, in Resolution #R-52-2012 the City Council also authorized that the City’s November 6, 2012, special municipal election be governed by the Colorado Uniform Election Code of 1992 to the extent necessary in order to conduct the election as a coordinated election with the County Clerk held on November 6, 2012; and

**WHEREAS**, C.R.S. §1-7-116(2) of the Uniform Election Code provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of that election; and

**WHEREAS**, the County Clerk has presented to the City an “Intergovernmental Agreement For Coordinated Election,” with an effective date of July 27, 2012, a copy of which is attached hereto as **Exhibit “A”** and incorporated by reference (“the Election Agreement”); and

**WHEREAS**, in order for the City to participate in the coordinated election with the County Clerk, it is therefore necessary for the City to enter into the Election Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, that:**

**Section 1.** The Election Agreement is hereby approved and the Mayor is authorized to enter into it on behalf of the City.

**Section 2.** The City Clerk shall comply with the provisions of the Election Agreement and shall act as the City’s designated local election official in all matters related to the November 6, 2012, special municipal election. The City Clerk shall also comply with the applicable provisions of the City Charter, of the Municipal Election Code of 1965 and, to the extent required by Resolution #R-52-2012, with the applicable

provisions of the Uniform Election Code of 1992 in conducting the November 6, 2012, special municipal election as a coordinated general election with the County Clerk.

**Section 3.** This Resolution shall go into effect as of the date of its adoption.

SIGNED this \_\_\_\_\_ day of August, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

# Exhibit A

## INTERGOVERNMENTAL AGREEMENT FOR GENERAL ELECTION

This Intergovernmental Agreement ("Agreement") is entered into by and between the Larimer County Clerk and Recorder ("County Clerk") and City of Loveland ("Entity"). This Agreement is made effective July 27, 2012.

WITNESSETH

**WHEREAS**, pursuant to C.R.S. §1-7-116(2), as amended, the County Clerk and the Entity shall enter into an agreement for the administration of their respective duties concerning the conduct of the general election to be held on November 6, 2012 ("Election"); and

**WHEREAS**, the County Clerk and the Entity are authorized to conduct elections as provided by law; and

**WHEREAS**, an election is required pursuant to C.R.S. §1-4-201 and C.R.S. §1-7-116(1). The County Clerk will conduct the Election as a "Vote Center election" as such term is defined in the Uniform Election Code of 1992, C.R.S. Title 1, as amended ("Code") and the current Colorado Secretary of State Election Rules, as amended ("Rules"); and

**WHEREAS**, the Entity has certain ballot race(s), ballot issue(s) and/or ballot question(s) to present to its eligible electors and shall participate in this Election; and

**NOW, THEREFORE**, for and in consideration of the promises herein contained, the sufficiency of which is hereby acknowledged, the County Clerk and the Entity agree as follows:

### ARTICLE I PURPOSE AND GENERAL MATTERS

**A. Goal.**

The purpose of this Agreement is to set forth the respective tasks in order to conduct the Election and to allocate the cost thereof.

**B. Coordinated Election Official.**

The County Clerk shall act as the "Coordinated Election Official" ("CEO") in accordance with the Code and Rules and shall conduct the Election for the Entity.

The County Clerk designates Doreen Bellfy, whose telephone number is 970.498.7941, as the "Contact Officer", to act as the primary liaison between the County Clerk and the Entity. The Contact Officer shall act under the authority of the County Clerk and shall have primary responsibility for the coordination of the Election with the Entity.

**C. Designated Election Official.**

The Entity designates Teresa G. Andrews as its "Designated Election Official" ("DEO"), whose phone is 970-962-2322 xtd 2, cell is 303-6511057 and fax is 970-962-2801, to act as primary liaison between the Entity and the Contact Officer. The DEO shall have primary responsibility for Election procedures to be handled by the Entity in accordance with the Code and Rules. The DEO shall be readily available and accessible during regular business hours, and at other times when notified by the Contact Officer in advance, for the purposes of consultation and decision-

making on behalf of the Entity. In addition, the DEO is responsible for receiving and timely responding to inquiries made by its voters or others interested in the Entity's election.

**D. Jurisdictional Limitation.**

The Entity encompasses territory within Larimer County, Colorado. This Agreement shall be construed to apply only to that portion of the Entity situated within Larimer County.

**E. Term.**

The term of this Agreement shall be from the date set forth above through December 31, 2012 and shall apply only to the Election.

**ARTICLE II  
DUTIES OF THE COUNTY CLERK**

**A. Voter Registration.**

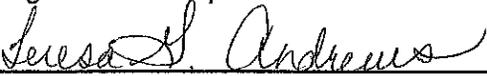
Supervise, administer and provide necessary facilities and forms for all regular voter registration sites.

**B. Ballot Preparation.**

1. Layout the text of the ballot in a format that complies with Code and Rules. To avoid ballot space issues, the County Clerk requests each ballot issue and ballot question are not more than 250 words.

2. The County Clerk will assign the letter and/or number of the Entity's ballot issue(s) or ballot question(s) which will appear on the ballot, and provide this assignment to the Entity.

- Sign on the line provided to indicate acknowledgement.

•   
 \_\_\_\_\_  
 Signature

3. Provide ballot printing layouts and text for the Entity's review and signature. If the Entity fails to provide approval by the required deadline, the content is to be considered approved.

4. Certify the ballot content to the printer(s).

5. Contract for ballots.

**C. Voter Lists.**

Upon request of the Entity, create and certify a list of registered voters containing the names and addresses of each elector registered to vote in the Entity.

**D. Election Judges.**

Appoint and compensate a sufficient number of election judges.

**E. Mail-in ballot and Voting sites.**

1. Provide that mail-in ballot packets be mailed to every eligible elector and shall be conducted in accordance with C.R.S. Title 1, Article 8.
2. Conduct mail, accessible, and emergency voting. Coordinate the location of voting sites.
3. Obtain and provide all ballots and supplies necessary for mail, accessible and emergency voting together with replacement ballots and affidavits and ballots for property owners who live in another Colorado county.
4. Provide all necessary equipment, forms and supplies to conduct the Election, including electronic voting equipment.

**F. Voting Jurisdiction.**

Provide the Entity a street locator file, which lists the street addresses located in the Entity within the statewide voter registration system. In order for the County Clerk to provide correct ballots to the electors, it is critical that the information contained in the Entity's locator file be accurate.

**G. Election Day Preparation.**

1. Provide, no later than ten days before the Election, notice by publication of a vote center election in accordance with C.R.S. §1-5-205(1.4).
2. Provide necessary electronic voting equipment together with personnel and related computer equipment for pre-election logic and accuracy testing, post-election audit and Election day needs.
3. Prepare and run pre-election logic and accuracy testing and audits of the voting system in accordance with C.R.S. §1-7-509 and Rules.
4. Conduct post-election audit of voting equipment and vote-counting equipment in accordance with C.R.S. §1-7-509 and Rules.

**H. TABOR Notice.**

1. If the County Clerk is responsible for preparing a TABOR notice, the County Clerk shall do so in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules.
2. Charge the Entity for all expenses for the preparation, printing, labeling and postage for the TABOR notice. Said expenses shall be prorated among all Entities participating in the TABOR notice. Such pro-ration to be based, in part, upon the number of addresses where one or more active registered voters of the Entity reside.
3. Coordinate and mail the TABOR notice not less than thirty days prior to the election in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules. The County Clerk shall determine the least cost method for mailing the TABOR notice and address the TABOR notice to "All Registered Voters" at each address in Larimer County where one or more active registered voters of the Entity reside. Nothing herein shall preclude the County Clerk from sending the TABOR Notice of the Entity to persons other

than electors of the Entity if such sending arises from the County Clerk's efforts to mail the TABOR Notice at least cost.

**I. Counting Ballots.**

1. Conduct and oversee the ballot counting process and report the results by Entity.
2. Establish backup procedures and backup sites for ballot counting should counting equipment and/or building facilities fail. In such event, counting procedures will be moved to a predetermined site.
3. If it is determined that counting must be moved to an established backup site, all related costs shall be paid by the Entities.

**J. Certifying Results.**

1. Appoint, instruct and oversee the board of canvassers.
2. Certify the results of the Entity's Election within the time required by law and provide the Entity with a copy of all Election statements and certificates required under Code.
3. If a recount is called for, conduct a recount in accordance with Code.

**K. Recordkeeping.**

1. Pursuant to C.R.S. §1-7-802, store all Election records as required.
2. Keep an accurate account of all Election costs.

**L. No Expansion of Duties.**

Nothing contained in this Agreement is intended to expand the duties of the County Clerk beyond those set forth in Code or Rules.

**ARTICLE III  
DUTIES OF THE ENTITY**

**A. Authority.**

Provide the County Clerk with a copy of the ordinance or resolution stating that the Entity will participate in the Election in accordance with the terms and conditions of this Agreement. The ordinance or resolution shall further authorize the presiding officer of the Entity or other designated person to execute this Agreement.

**B. Call and Notice.**

1. Publish all notices relative to the Election as required by Code, Rules, the Entity's Charter and any other statute, rule or regulation.
2. Entities governed by Title 32 shall be responsible for mailing the required notice to each address of one or more active registered electors who do not reside within Larimer County or counties where the Entity is located in accordance with C.R.S. §1-7-906(2) .

**C. Voting Jurisdiction.**

1. Review the information contained in the street locator file and certify its accuracy, as well as any changes, additions or deletions to the file. It is the Entity's responsibility to ensure that the information contained in the locator file is an accurate representation of the Entity's street indexes contained within the Entity's legal boundaries. The certification of the street locator file shall be made no later than August 6, 2012 at 5:00 p.m. to the County Clerk. If the certification is not provided by the date specified herein, the Entity may not participate in the Election.

2. Any proposed Entity not already identified by a tax authority code in the county Assessor's records, shall provide the County Clerk with a certified legal description, map and locator, identifying all "high/low" ranges for street addresses within the proposed Entity, no later than August 6, 2012 at 5:00 p.m. Once the information has been entered in the statewide voter registration system, the DEO shall review the information contained in the street locator file and shall certify its accuracy, as well as any changes, additions or deletions to the file no later than August 13, 2012 at 5:00 p.m. to the County Clerk. If the certification is not provided by the required deadline specified herein, the Entity may not participate in the Election.

**D. Petitions, Preparation and Verification.**

Perform all responsibilities required to certify any candidate or initiative petition to the ballot.

**E. Ballot Preparation.**

1. Be solely responsible for determining whether a ballot race, ballot issue, or ballot question is properly placed before the voters.

Each ballot issue/question submitted shall be followed by the words "yes" and "no".

- Sign on the line provided to indicate acknowledgement.

•   
 \_\_\_\_\_  
 Signature

2. Pursuant to C.R.S. §1-5-203(3)(a), provide a certified copy of the ballot content (race(s), issue(s) and question(s)) to the County Clerk as an email attachment to [elections@co.larimer.co.us](mailto:elections@co.larimer.co.us) or on compact disc (650 MB or higher), at the earliest possible time and in any event no later than sixty days before the election, September 7, 2012 at 5:00 p.m. The ballot content must be certified exactly in the order in which it is to be printed on the ballot pages and sample ballots in the following format:

Microsoft Word '97 or a version of Microsoft Word able to be converted to Microsoft Word '97  
 Font Type: Arial  
 Font Size: 8 point  
 Justification: Left  
 All Margins: 0.5 inches

3. The certified list of ballot race(s), ballot issue(s) and/or ballot question(s) submitted by the Entity shall be final.

4. Proofread and approve the Entity's ballot content for printing within one business day of receipt from the County Clerk. The Entity shall provide a fax number and designate a person to be available for proofing and approving ballot content for printing. Due to time constraints, the Entity must provide contact information for someone who is available from 8:00 a.m. to 10:00 p.m. from September 7, 2012 until September 14, 2012, or until final approval of

printing of ballots has been reached. The County Clerk agrees to keep all contact personnel informed of ballot printing status. The Entity has designated Teresa G. Andrews  
City Clerk, whose phone is 970-962-2322 x2, cell is 303-6511057 and fax is 970-962-2901.

5. Once approval has been received, the County Clerk will not make any changes to the ballot content. If the Entity fails to provide approval by the required deadline, the content is to be considered approved.

6. Provide audio recording of the proper pronunciation of any candidate name certified to the County Clerk. Please see Exhibit B.

7. The Entity shall defend and resolve at its sole expense all challenges relative to the ballot race(s), ballot issue(s) and/or ballot question(s) as certified to the County Clerk for inclusion in the Election.

#### **F. Election Participation.**

If requested by the County Clerk, provide person(s) to participate and assist in the Election process. The person(s) provided by the Entity must be registered to vote in Larimer County.

#### **G. Property Owners.**

1. Notify and provide information and materials to property owners where an eligible elector may vote at any voting site or make application for a mail-in ballot specific to that district to be voted on and filed with the County Clerk. C.R.S. §32-1-806, C.R.S. §1-7-104, C.R.S. §1-8-104(3)

2. The Entity shall be responsible for obtaining its property owner list(s) from the County Assessor's office in accordance with C.R.S. §1-5-304. The Entity shall provide an initial list of voters who are registered to vote in Colorado and own property within the district to the County Clerk no later than October 8, 2012, and will provide a final list of voters who are registered to vote in Colorado and own property within the district to the County Clerk no later than October 17, 2012. Both lists will be provided in either a .txt or .xls file format.

3. Electors who own property within the district in Larimer County but who reside and are registered to vote in another Colorado county may vote in person or may request a mail-in ballot from the County Clerk.

#### **H. TABOR Notice.**

1. If the Entity is responsible for preparing a TABOR notice for any ballot issue(s), the Entity shall do so in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules.

2. The Entity shall be solely responsible for calculating and providing to the County Clerk any fiscal information necessary to comply with TABOR. The County Clerk shall in no way be responsible for the Entity's compliance with TABOR or the accuracy of the fiscal information.

3. The process of receiving written comments relating to ballot issue(s) and summarizing such comments, as required by TABOR, is the sole responsibility of the Entity.

4. The Entity shall be solely responsible for its preparation, accuracy and the language contained therein, and shall submit such notice, including pro and con summaries and

fiscal information, to the County Clerk no later than September 25, 2012 at 5:00 p.m., pursuant to C.R.S. §1-7-904. Such notice shall be provided to the County Clerk as an email attachment to [elections@co.larimer.co.us](mailto:elections@co.larimer.co.us) or on compact disc (650 MB or higher) in the following format:

Microsoft Word '97 or a version of Microsoft Word able to be converted to Microsoft Word '97  
 Font Type: Arial  
 Font Size: 8 point  
 Justification: Left  
 All Margins: 0.5 inches

5. The certified text, summary of comments and fiscal information submitted by the Entity shall be final.

6. Proofread and approve the Entity's TABOR content for printing. The Entity shall provide a fax number and designate a person to be available for proofing and approving TABOR content for printing. Due to time constraints, the Entity must provide contact information for someone who is available from 8:00 a.m. to 10:00 p.m. from September 25, 2012 until October 5, 2012, or until the TABOR notice is mailed. The County Clerk agrees to keep all contact personnel informed of TABOR printing status. The Entity has designated

HERSIE G. Andrews or Jeanne Weaver, whose phone is  
 (970) 962-2324 or 962-2324, cell is 303-6511057 or 970-481-2897 and fax is  
 970-962-2901.

7. Once approval has been received, the County Clerk will not make any changes to the TABOR content. If the Entity fails to provide approval by the required deadline, the content is to be considered approved.

8. Pursuant to C.R.S. §1-7-906(2), the Entity shall be responsible for mailing the TABOR notice to each address of one or more active registered electors who do not reside within Larimer County.

#### I. Cancellation of Election by the Entity.

If the Entity resolves not to participate in the Election, notice shall be delivered in writing to the Contact Officer immediately; *provided, however that* the Entity shall not cancel after the 25<sup>th</sup> day prior to the Election, October 12, 2012, pursuant to C.R.S. §1-5-208(2). The Entity shall reimburse the County Clerk for the actual expenses incurred in preparing for the Election. If cancellation occurs after the certification deadline, full election costs may be incurred. The Entity shall provide notice by publication, as defined in Code, of cancellation of the Election and a copy of such notice shall be posted at each voting location, in the office of the Entity, in the office of the County Clerk, in the office of the DEO, and, if the Entity is a special district, in the office of the Division of Local Government.

### ARTICLE IV COSTS

#### A. Election Costs.

The minimum fee for election services is \$650.00.

1. The Entity's proportional share of costs shall be based on County expenditures relative to the Election and the number of electors per Entity. Costs include, but are not limited to: supplies, printing, postage, legal notices, temporary labor, rentals, and other expenses attributable to the County Clerk's administration of the Election for the Entity. The Entity shall

be charged its pro-rated share of election costs for any software programs used to count voted ballots as well as pre-election and post-election maintenance and on-site technical support.

2. The Entity affirms that it has sufficient funds available in its approved budget to pay its prorated Election expenses.

3. If it is determined that counting must be moved to an established backup site, the Entity shall be charged its pro-rated share.

4. The cost of any recount(s) will be charged to the Entity, or if more than one Entity is involved in the recount, the cost will be prorated among the participating Entities.

5. Upon receipt of the invoice, pay to the County Clerk within thirty days a fee which shall be an amount determined in accordance with the formula set forth on Exhibit A. If Exhibit A cannot be completed at the time of the mailing of this Agreement, it will be provided as soon as possible.

6. The Entity shall pay any additional or unique election costs resulting from Entity delays and/or special preparations or cancellations relating to the Entity's participation in the Election.

#### **B. TABOR Costs.**

The minimum fee for TABOR services is \$350.00.

The Entity shall pay a pro-rated amount for the costs to produce and mail the TABOR notice. Such pro-ration to be based, in part, on addresses where one or more active registered electors of the Entity reside.

#### **C. Invoice.**

The County Clerk shall submit to the Entity an itemized invoice for all expenses incurred under this Agreement and the Entity shall remit to the County Clerk the total due upon receipt. Any amount not paid within 30 days after receipt will be subject to an interest charge at the lesser of 1 ½% per month or the highest rate permitted under law. The itemized invoice will be sent to Entities mid to late December.

### **ARTICLE V MISCELLANEOUS**

#### **A. Entire Agreement.**

This Agreement and its Exhibits constitute the entire agreement between the parties as to the subject matter hereof and supersede all prior or current agreements, proposals, negotiations, understandings, representations and all other communications, both oral and written.

#### **B. Indemnification.**

To the extent permitted by law, each party agrees to indemnify and hold harmless the other party, its officials, officers, employees and agents from and against any and all losses, costs (including attorneys' fees), demands or actions arising out of or related to any negligent actions, errors or omissions of the indemnifying party in connection with the transactions contemplated by this Agreement.

In the event a court of competent jurisdiction finds the Election for the Entity was void or otherwise fatally defective as a result of the sole breach or failure of the County Clerk to perform in accordance with this Agreement or laws applicable to the Election, the Entity shall be entitled to recover expenses or losses caused by such breach or failure up to the maximum amount paid by the Entity to the County Clerk. The County Clerk shall in no event be liable for any expenses, damages or losses in excess of the amounts paid under this Agreement. This remedy shall be the sole and exclusive remedy for the breach available to the Entity.

No term or condition in this agreement shall constitute a waiver of any provisions of the Colorado Government Immunity Act.

**C. Conflict of Agreement with Law, Impairment.**

Should any provision of this Agreement be determined by a court of competent jurisdiction to be unconstitutional or otherwise null and void, it is the intent of the parties hereto that the remaining provisions of this Agreement shall be of full force and effect.

**D. Time of Essence.**

Time is of the essence in the performance of this Agreement. The time requirements of Code and Rules shall apply to completion of required tasks.

**E. No Third Party Beneficiaries.**

Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties, and nothing contained herein shall give or allow any such claim or right of action by any other person or Entity.

**F. Governing Law, Jurisdiction & Venue.**

This Agreement, the interpretation thereof, and the rights of the parties under it will be governed by, and construed in accordance with, the laws of the State of Colorado. The courts of the State of Colorado shall have sole and exclusive jurisdiction of any disputes or litigation arising under this Agreement. Venue for any and all legal actions arising shall lie in the District Court in and for the County of Larimer, State of Colorado.

**G. Headings.**

The section headings in this Agreement are for reference only and shall not effect the interpretation or meaning of any provision of this Agreement.

**H. Severability.**

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.

LARIMER COUNTY  
 NOVEMBER 6, 2012 - GENERAL ELECTION  
 COST PRORATION SUMMARY ESTIMATED COSTS  
 EXHIBIT A

PARTICIPATING JURISDICTION	ELECTION	TABOR	ESTIMATE ONLY - TABOR COSTS				ESTIMATE ONLY - ELECTION COSTS				TOTAL		
			NUMBER OF HOUSEHOLDS MAILED	COST SUBJECT TO MINIMUM CHARGE \$350	% OF TOTAL HOUSEHOLDS FOR GENERAL COST PRORATION	BALANCE OF COSTS X % OF HOUSEHOLDS INCL. MIN	NUMBER OF REGISTERED VOTERS	COST SUBJECT TO MINIMUM CHARGE \$650	% OF TOTAL REGISTERED VOTERS FOR GENERAL COST PRORATION	BALANCE OF COSTS X % OF REG VOTERS INCL. MIN & SOS		TOTAL ELECTION COST PER PARTICIPANT	
State of Colorado (Active voters @ .80 ea.)	YES	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	\$135,451.20	\$135,451.20
Larimer County	YES	NO	0	\$0.00	0.000000%	\$0.00	169,314	NA	NA	63.06979%	\$668,948.95	\$668,948.95	\$668,948.95
Town of Berthoud	YES	NO	0	\$0.00	0.000000%	\$0.00	2,776	NA	NA	1.03407%	\$10,967.80	\$10,967.80	\$10,967.80
City of Loveland	YES	NO	0	\$0.00	0.000000%	\$0.00	9,885	NA	NA	3.68218%	\$39,055.01	\$39,055.01	\$39,055.01
City of Fort Collins	YES	NO	0	\$0.00	0.000000%	\$0.00	75,803	NA	NA	28.23676%	\$299,492.88	\$299,492.88	\$299,492.88
St. Vrain Valley School District RE-1J	YES	YES	220	NA	4.21456%	\$815.52	468	NA	\$650	0.000000%	\$650.00	\$650.00	\$1,465.52
Loveland Rural Fire	YES	YES	5,000	NA	95.78544%	\$18,534.48	10,677	NA	NA	3.97720%	\$42,184.15	\$42,184.15	\$60,718.64
Horseshoe View Estates South PID No. 44	YES	YES	100	\$350.00	0.000000%	\$350.00	200	\$650	\$650.00	0.000000%	\$650.00	\$650.00	\$1,000.00
Soldier Canyon Estates PID No. 52	YES	YES	100	\$350.00	0.000000%	\$350.00	200	\$650	\$650.00	0.000000%	\$650.00	\$650.00	\$1,000.00
Horseshoe View Estates North PID No. 53	YES	YES	100	\$350.00	0.000000%	\$350.00	200	\$650	\$650.00	0.000000%	\$650.00	\$650.00	\$1,000.00
Terry Shores PID No. 54	YES	YES	100	\$350.00	0.000000%	\$350.00	200	\$650	\$650.00	0.000000%	\$650.00	\$650.00	\$1,000.00
River Glen LID No. 2012-1	YES	YES	100	\$350.00	0.000000%	\$350.00	200	\$650	\$650.00	0.000000%	\$650.00	\$650.00	\$1,000.00
<b>TOTAL</b>			5,720	\$1,750.00	100%	\$21,100.00	269,923	\$3,900	\$1,200,000.00	100.000000%	\$1,200,000.00	\$1,221,100.00	\$1,221,100.00

Cost subject to minimum charge (\$21,100\*cost to print/mail  
 tabor) less the total of all minimum charges to entities (\$1,750)  
 X percentage of total households for general cost proration for  
 your district.

Cost subject to minimum charge (\$1,200,000) less the total  
 balance of cost subject to minimum charge (\$3,900) less the  
 total elections costs of State of Colorado (\$135,451.20) X  
 percentage of total registered voters for general costs proration  
 for your district.

10-Aug-12

**EXHIBIT B**  
**AUDIO FOR ACCUVOTE TSX UNIT**

In accordance with Secretary of State Rule 10.5, all candidates shall provide an audio recording to the County Clerk no later than the last day upon which the Entity certifies the ballot content, pursuant to C.R.S. §1-5-203(3)(a). The audio recording of the candidate's name shall be recorded exactly as it is certified to the County Clerk.

To be in compliance with the above Code and Rule, the Larimer County Clerk and Recorder's office has set up a voice mailbox at 970.498.7946 that candidates will need to call to provide the correct pronunciation of their name. Upon calling the voice mailbox, they will receive instructions on recording their information, as well as, options for listening, deleting, re-recording and saving their message. Please inform candidates within your district of the necessity of recording the correct pronunciation of their name.

The Larimer County Clerk and Recorder's office will contact the Entity if pronunciation guidelines on any ballot race(s), ballot issue(s) and/or ballot question(s) are needed.

Please contact our office at 970.498.7820 if you have any questions or need additional information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective upon the date first above written.

**LARIMER COUNTY, COLORADO  
CLERK AND RECORDER**

Date: \_\_\_\_\_

\_\_\_\_\_  
**Scott Doyle**

**ENTITY:**

NAME OF ENTITY:

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Entity phone number

\_\_\_\_\_  
Title of Authorized Representative  
signing on behalf of Entity

DATE: 5.22.12  
APPROVED AS TO FORM:  
Dinda K Connors  
82 ASSISTANT COUNTY ATTORNEY



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

**AGENDA ITEM:** 7  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Keith Reester, Public Works Department  
**PRESENTER:** David Klockeman, PE, City Engineer

**TITLE:**

A resolution approving an assignment and amendment of a lease for real property owned by the City of Loveland and located at 1355 N. Lincoln Avenue in Loveland, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

This is an administrative action to consider the adoption of a resolution approving an assignment and amendment of an existing lease agreement between the City of Loveland (City) and Good Times Drive Thru Inc. for the real property owned by the City in the southwest corner of the intersection of North Lincoln Avenue and East Eisenhower Boulevard (1355 N. Lincoln Avenue). The resolution also authorizes the City Manager to execute the Amendment on behalf of the City.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The extension continues the lease income on this City owned property as the long-term improvements to the intersection of North Lincoln Avenue and Eisenhower Boulevard have not been scheduled.

As this is an amendment (extension) of the existing lease, per the conditions of the original agreement, the amount of the rental payment will not change - \$1,625 per month plus three (3)

percent of the amount by which the gross sales from the Restaurant for any Lease Year exceeds \$750,000.

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**SUMMARY:**

In 1997 and 1998, in anticipation of the future expansion of the intersection of North Lincoln Avenue (US 287) and East Eisenhower Boulevard (US 34) and as the result of development activity in this area, the City was able to obtain some of the necessary right-of-way at this location. The right-of-way included a portion of the vacant property in the northeast corner, a portion of the property in the northwest corner (the existing Walgreen's), and the entire property in the southwest corner (existing Good Times). The entire Good Times property was purchased by the City in January 1998 as the future intersection resulted in only a small portion of the property remaining, including the elimination of all access to North Lincoln Avenue.

Because the intersection project was not planned to be constructed at that time, the City entered into a long-term lease with Good Times (Through the Bailey Company, LLLP), which allows the City to maintain control of the property while earning income from rental charges and sales tax. The original lease had an initial term of 10 years with options for two five year extensions. The first five year extension will expire in March 2013.

Good Times recently approached the City and requested to assign the lease from the Bailey Company , LLLP to Good Times Drive Thru Inc. and a longer term extension as they are looking at updating this location. After review of the information related to the 10-year Transportation Capital Program, it was determined that this location would likely not see roadway improvements within the next 10 years. Therefore, it was determined that a new 10-year extension with two additional five-year options would be appropriate. As this is a long-term lease, City Council approval through a resolution is required.

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**REVIEWED BY CITY MANAGER:**

*William A. Cahill*

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**LIST OF ATTACHMENTS:**

1. A Resolution approving an Assignment and Amendment of an existing lease agreement between the City of Loveland (City) and Good Times Drive Thru Inc. for the real property owned by the City in the southwest corner of the intersection of North Lincoln Avenue and East Eisenhower Boulevard (1355 N. Lincoln Avenue).

**RESOLUTION #R-56-2012**

**A RESOLUTION APPROVING AN ASSIGNMENT AND AMENDMENT OF A LEASE FOR REAL PROPERTY OWNED BY THE CITY OF LOVELAND AND LOCATED AT 1355 N. LINCOLN AVENUE IN LOVELAND, COLORADO**

**WHEREAS**, on February 26, 1998, the City of Loveland, as landlord, and The Bailey Company, LLLP, as tenant, entered into a written lease for approximately 21,000 square feet of real property located at 1355 N. Lincoln Avenue in Loveland, Colorado (“Lease”); and

**WHEREAS**, the Lease provides for an effective term of ten years, with an option to extend the Lease for up to four additional periods of five years each; and

**WHEREAS**, by letter to the City dated November 15, 2007, The Bailey Company, LLLP exercised its option to extend the Lease through March 29, 2013; and

**WHEREAS**, The Bailey Company, LLLP now desires to assign the Lease to Good Times Drive Thru Inc.; and

**WHEREAS**, Good Times Drive Thru Inc. desires to accept assignment of the Lease, subject to certain amendments regarding the term of the Lease and options to extend the term; and

**WHEREAS**, the City, The Bailey Company, LLLP, and Good Times Drive Thru Inc. desire to enter into a written agreement to effectuate the assignment and amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the “Assignment and Amendment of Lease,” attached hereto as Exhibit A and incorporated herein by reference (“Amendment”), is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Amendment in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Amendment on behalf of the City.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21<sup>st</sup> day of August, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Shawn L. Oltus*  
Assistant City Attorney

**ASSIGNMENT AND AMENDMENT OF LEASE  
1355 N. Lincoln Avenue, Loveland, Colorado**

**This Assignment and Amendment of Lease (“Amendment”)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and among the **City of Loveland**, a Colorado municipal corporation (“**Landlord**”), **The Bailey Company, LLLP**, a Colorado limited liability limited partnership (“**The Bailey Company**”), and **Good Times Drive Thru Inc.**, a Colorado corporation (“**Good Times**,” or “**Tenant**”). Landlord, The Bailey Company, and Good Times are sometimes referred to herein collectively as the “**Parties**.”

**Whereas**, on February 26, 1998, Landlord and The Bailey Company entered into a lease (“**Lease**”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, for approximately 21,000 square feet of real property located at 1355 N. Lincoln Avenue in Loveland, Colorado (“**Leased Premises**”); and

**Whereas**, the Lease provided for an effective term of ten years, with an option to extend the Lease for up to four additional periods of five years each; and

**Whereas**, by letter to Landlord dated November 15, 2007, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference, The Bailey Company exercised its option to extend the Lease through March 29, 2013; and

**Whereas**, The Bailey Company now desires to assign the Lease to Good Times; and

**Whereas**, Good Times desires to accept assignment of the Lease, subject to certain amendments as described herein.

**Now, therefore**, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. **Assignment**. The Bailey Company hereby assigns all of its right, title, and interest to the Lease to Good Times. Good Times hereby accepts such assignment and agrees to assume all of the responsibilities and obligations of the Tenant under the Lease. Landlord hereby acknowledges and consents to such assignment, which shall be effective as of the date of this Amendment.

2. **Amendment**. Landlord and Good Times agree that the Lease shall be amended as follows:

a. Paragraph 3.2 shall be deleted in its entirety and replaced with the following:

**Tenant’s Option to Extend Term**. Landlord and Tenant acknowledge that the Lease has been extended and shall remain in effect through March 29, 2013. After that date, Tenant shall have the right to extend the Term for up to one additional period of ten years, and two additional periods of five years each,

for a total maximum extension of twenty years (each such period is hereinafter referred to as an "Extended Term"). Notice that Tenant intends to exercise its option for an Extended Term shall be given by Tenant to Landlord in writing no less than ninety days prior to the expiration of the then-current Term, and failure to so extend the Term shall constitute a termination of the option to extend granted hereby. From and after commencement of an Extended Term, all of the other terms, covenants, and conditions of this Lease shall apply to the Extended Term, and references to the Term shall be deemed to include the then-current Extended Term.

b. Paragraph 16.2 shall be amended to change all references to January 1, 2016 to January 1, 2023.

c. Paragraph 23.2 shall be amended to replace the Tenant notification information with the following:

IF TO TENANT: Good Times Drive Thru Inc.  
Attn: Boyd E. Hoback, President & CEO  
601 Corporate Circle  
Golden, CO 80401  
Facsimile: (303) 384-0223

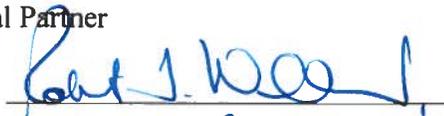
WITH A COPY TO: Andrew Pidcock  
(which shall constitute Snell & Wilmer L.L.P.,  
notice) 1200 17th Street, Suite 1900  
Denver, CO 80202

3. Except as amended herein, the terms and conditions of the Lease shall remain in full force and effect in accordance with the provisions thereof.

In Witness Whereof, the Parties have signed this Amendment on the date set forth above.

**The Bailey Company, LLLP,**  
A Colorado limited liability limited partnership

By: The Erie County Investment Co.  
Its: General Partner

By:   
Title: CFO/VP

**Good Times Drive Thru Inc.,**  
A Colorado corporation

By:   
Boyd E. Hoback, President & CEO

**City of Loveland,**  
A Colorado municipality

By: \_\_\_\_\_  
William D. Cahill, City Manager

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

  
Assistant City Attorney

LEASE

THIS LEASE is made and entered into this 26<sup>th</sup> day of February, 1998, by and between the CITY OF LOVELAND ("Landlord"), and THE BAILEY COMPANY, a Colorado limited partnership ("Tenant").

In consideration of the mutual covenants and agreements contained in this Lease and the due and faithful performance of each and all the terms, covenants and conditions contained herein, Landlord and Tenant hereby agree as follows:

**ARTICLE I.  
DEFINED TERMS**

The terms used in this Lease shall have the following meanings:

1.1 "Effective Date" shall mean the date on which the Lease is fully executed by both Landlord and Tenant as set forth on the signature page(s).

1.2 "Extended Term" shall mean the term of occupancy of Tenant beyond the initial ten-year Term as established in Section 3.1.

1.3 "Governmental Authority" shall mean the United States, the state, the county, the city, or any other political subdivision in which the Leased Premises is located, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Landlord, Tenant or the Leased Premises.

1.4 "Governmental Requirements" shall mean all laws, ordinances, rules and regulations of any Governmental Authority applicable to Landlord, Tenant or the Leased Premises.

1.5 "Hazardous Materials" shall mean: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) petroleum products, (f) underground storage tanks, whether empty, filled or partially filled with any substance; (g) any substance, the presence of which on, in, at or under the Leased Premises is prohibited by any Governmental Requirements; and (h) any other substance by which any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, removal, disturbance, treatment, or disposal.

1.6 "Hazardous Materials Contamination" shall mean the contamination of or the presence upon or in any part of the Leased Premises, any current structures located on the Leased Premises, facilities, soil, groundwater, air or other elements on or of the Leased Premises by

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Hazardous Materials, or the contamination of or the presence upon or in any structure, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time emanating from the Leased Premises.

1.7 "Leased Premises" shall mean approximately 21,000 square feet of real property located at 1355 N. Lincoln Avenue, in Loveland, Colorado, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference as though fully set forth, including all easements, rights and appurtenances thereto and including the restaurant building situated thereon on the Effective Date.

1.8 "Lease Year" shall mean: (a) twelve full calendar months following the first day of the month following the Term Commencement Date if the Term Commencement Date is a day other than the first day of a month; or (b) twelve full calendar months following the Term Commencement Date if such date is the first day of the month, and each anniversary date thereof.

1.9 "Premises" shall mean the Leased Premises and the Restaurant together.

1.10 "Rental" shall mean collectively Base Rental and Percentage Rental as set forth in Sections 6.1 and 6.2.

1.11 "Restaurant" shall mean the Good Times Drive-Thru Restaurant to be operated on the Leased Premises by Tenant.

1.12 "Tenant's Conditions Precedent" shall mean each of those items specifically set forth in Section 4.1 which need to be completed, satisfied or formally waived by Tenant in its sole discretion prior to Tenant incurring any obligation under the terms and conditions of this Lease.

1.13 "Term" shall mean the period commencing with the Term Commencement Date and ending on the Term Expiration Date as provided in Section 3.1.

1.14 "Term Commencement Date" shall mean the date described in Section 3.1 upon which the Term shall commence.

## ARTICLE II. LEASE OF PREMISES

2.1 Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises subject to the terms and conditions set forth herein.

## ARTICLE III. TERM

3.1 Term. This Lease shall be effective as a binding contract between Landlord and Tenant upon the Effective Date. The Term shall be for a period of ten years commencing upon the

Term Commencement Date, which shall be the thirty-first day after the Effective Date, provided that Tenant has removed or waived all of Tenant's Conditions Precedent as set forth in Section 4.1 hereof.

3.2 Tenant's Option to Extend Term. Tenant shall have the right to extend the Term beyond such ten-year period by up to four additional periods of five years each (each such period is hereinafter referred to as an "Extended Term"). Notice that Tenant intends to exercise its option for an Extended Term shall be given by Tenant to Landlord in writing no less than ninety days prior to the expiration of the initial ten-year Term or any Extended Term as the case may be, and failure to so extend the Lease Term shall constitute a termination of the option to extend granted hereby. From and after commencement of an Extended Term, all of the other terms, covenants and conditions of this Lease shall apply to the Extended Term and references to Term shall be deemed to include the then current Extended Term.

#### ARTICLE IV. CONDITIONS PRECEDENT TO LEASE EFFECTIVENESS

4.1 Tenant's Conditions Precedent. Notwithstanding anything provided herein to the contrary, Tenant's obligations under this Lease are contingent upon the satisfaction or written waiver by Tenant in its sole discretion within thirty days after the Effective Date of each of Tenant's Conditions Precedent set forth below.

(a) That Tenant shall have completed the special review process required by the Zoning Ordinance of the City of Loveland and it shall have obtained or received adequate assurances that it will obtain all necessary zoning, building and other permits, licenses and approvals required for preparation of the Leased Premises for renovation and operation of the Restaurant on the Leased Premises, including but not limited to a double drive-through service facility, signage, seating, easements and other adequate provisions for necessary parking and vehicular ingress and egress to and from the Leased Premises. Landlord shall cooperate with Tenant in connection with obtaining such permits and licenses but shall not be obligated to pay any sums of money therefor unless otherwise specifically provided herein. Notwithstanding the foregoing, Landlord's cooperation with Tenant does not necessarily imply approval of Tenant's site plan for the Premises, which approval must only be obtained through the special review process described above.

(b) That Landlord's title to the Leased Premises, all liens and other encumbrances affecting the Leased Premises, and all utility easements, applicable zoning ordinances, legal roadways and development restrictions will not interfere with the leasing and operation of the Restaurant by Tenant or the ownership of any of Tenant's property located in and around the Restaurant. Within ten days after the Effective Date, Landlord shall furnish to Tenant, at Landlord's expense, a commitment for a policy of leasehold title insurance ("Title Commitment") issued by a title insurance company selected by Tenant ("Title Company") covering Tenant's interest in the Leased Premises in the amount of \$300,000 and reflecting the status of Landlord's title to the Leased Premises and indicating extended coverage over all general exceptions. Landlord, at Landlord's expense, shall furnish Tenant an ALTA policy of leasehold title insurance, with extended coverage over all general exceptions, issued pursuant to the Title Commitment as soon as practicable after the Term Commencement Date.

4.2 Failure of Tenant's Conditions Precedent. In the event that all of Tenant's Conditions Precedent have not been satisfied within thirty days after the Effective Date, Tenant shall have the right upon written notice to Landlord, delivered to Landlord prior to or within five days after the expiration of such thirty-day period to either: (i) terminate this Lease, in which event neither Landlord nor Tenant shall have any further rights or obligations hereunder; or (ii) waive Tenant's Conditions Precedent which have not yet been satisfied and proceed to perform the terms and conditions of this Lease. If Tenant fails to deliver such termination notice prior to or within five days after such thirty-day period, this Lease shall remain in full force and effect and all Tenant's Conditions Precedent shall be deemed to have been satisfied or waived by Tenant. Failure of Tenant to satisfy or waive a Condition Precedent shall not be deemed to be or construed as an act of bad faith.

## ARTICLE V. USE

5.1 Permitted Uses. Except as otherwise provided in Section 5.2, the Leased Premises shall be used for the purposes of maintaining and operating thereon the Restaurant or for any other lawful use.

5.2 Other Uses. Notwithstanding any other provision of this Lease, Tenant or any successor in interest to Tenant in its sole discretion may voluntarily close the Restaurant and may remove the Restaurant (except the building) and all of Tenant's other property from the Leased Premises and continue to pay the Rental and other amounts due hereunder or may convert the Leased Premises to another lawful use, as determined by Tenant or such successor in its sole discretion, provided that such use shall be lawful and legitimate and not be in violation of any municipal, local, state or federal laws, regulations and ordinances governing same which are in existence at the time of such conversion.

## ARTICLE VI. RENTAL

6.1 Base Rental. During the Term and any extensions thereof, Tenant shall pay to Landlord monthly base rental ("Base Rental") in the amount of \$1,625 per month. There shall be no increases to such monthly amount of Base Rental. Subject to the qualifications set forth herein, the Base Rental shall be paid by Tenant in monthly installments in advance, without demand, on the first day of each calendar month during the Term and any extensions thereof. The prorated Base Rental for the first fractional month of the Term, if any, shall be paid on the first day of the following calendar month.

6.2 Percentage Rental. In addition to Base Rental, Tenant shall pay to Landlord annual percentage Rental ("Percentage Rental") which shall be three percent of the amount by which Tenant's gross sales from the Restaurant for any Lease Year exceeds \$750,000 for such Lease Year. Tenant's gross sales mean all sales or other income arising from Tenant's business conducted at the Restaurant, less sales taxes, sales made to employees, sales for which cash has been refunded, complimentary or coupon promotions for which cash is not received and sales of any improvements

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to or equipment on the Premises. Within thirty days after the end of each Lease Year, Tenant shall furnish to Landlord a written statement setting forth the Percentage Rental, if any, and the payment of such Percentage Rental with respect to such prior Lease Year.

6.3 Payment of Rental and Other Amounts Due. If Tenant shall fail to pay any Rental or any other amounts or charges due hereunder within ten days of the date upon which such payments are due, the unpaid balance of such payments shall bear interest at the per annum rate of two percent over the then current Prime Rate being charged by Bank One Denver, NA, from the date due to the date of payment. All Rental and other payments shall be paid by Tenant to Landlord at the address set forth in Section 23.2 hereof or at such other place as may from time to time be designated by notice from by Landlord to Tenant.

#### **ARTICLE VII. RESTAURANT CONSTRUCTION**

7.1 Tenant's Obligations. Tenant shall renovate the existing building to establish the Restaurant and all other improvements on the Leased Premises at Tenant's sole cost and expense. Utility tap charges, development fees, deposits and recoveries due to Tenant's use of utilities on the Leased Premises shall also be paid by Tenant.

#### **ARTICLE VIII. UTILITIES**

8.1 Payment. Tenant shall pay all charges for all electricity, water, natural gas and all other utility services (including applicable tap fees and deposits) used in, on or about or which are supplied to the Premises.

#### **ARTICLE IX. INDEMNITY - INSURANCE BY TENANT**

9.1 Indemnities. Tenant covenants with Landlord that: (i) from the Effective Date through the date of Tenant's waiver or satisfaction of the last of Tenant's Conditions Precedent described in Article IV hereof, Tenant does hereby indemnify, save and hold Landlord free and harmless from all injury and damage to the Leased Premises and any person or persons, which such injury or damage is caused by the activities of Tenant, Tenant's employees, officers, agents, contractors, subcontractors or any invitee of Tenant on the Leased Premises; and (ii) from and after the date of Tenant's satisfaction or waiver of the last of Tenant's Conditions Precedent, Landlord shall not be liable for any damage or liability of any kind or for any damage or injury to persons or property from any cause whatsoever by reason of the use, occupancy and enjoyment of the Premises by Tenant or any person holding under Tenant, and Tenant shall during such period indemnify and hold harmless Landlord from all liability whatsoever on account of any such damage or injury and from all liens, claims and demands arising out of Tenant's use of the Premises; provided, however, that Tenant shall not be liable for damage or injury occasioned by reason of the negligent acts or omissions of Landlord, its agents, servants, employees or contractors and to the extent permitted by law, Landlord hereby agrees to indemnify and hold Tenant harmless therefrom. Notwithstanding

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the foregoing, the indemnity of Tenant set forth in this Section 9.1 specifically excludes any Hazardous Materials Contamination which existed on, at, in or under the Leased Premises on or before the Term Commencement Date and any Hazardous Materials Contamination created, generated or released by any person other than Tenant which migrates onto or under the Leased Premises after such date.

9.2 Insurance. Tenant further covenants and agrees that, from and after the date of satisfaction or waiver of the last of Tenant's Conditions Precedent, Tenant will carry and maintain, at Tenant's sole cost and expense, bodily injury and property damage liability insurance with coverage limits of not less than \$2,000,000 combined, and \$1,000,000 for each occurrence, insuring against any and all liability of Tenant with respect to the Premises or arising out of the maintenance or use thereof. The Restaurant building insurance shall include "All Risks" coverage for replacement. All such bodily injury liability insurance and property damage liability insurance may be provided under umbrella-type policies maintained by Tenant. All policies of insurance provided for herein shall be issued by insurance companies with general policyholder's ratings of not less than "A" and financial ratings of not less than "Class XII" as rated in the most currently available Best's Insurance Reports. All such policies shall be issued in the name of Tenant and shall name Landlord as an additional insured thereunder, which policies shall be for the mutual and joint benefit and protection of Landlord and Tenant to the extent of their respective interests in the Premises. Certificates evidencing such insurance shall be delivered by Tenant to Landlord within a reasonable time after Landlord's request therefor. As often as any such insurance policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance shall contain a provision that the company writing such policy will give Landlord thirty days' prior written notice of any cancellation or lapse of the effective date or of any reduction in the amounts of such insurance. During periods of demolition or construction on the Leased Premises, Tenant shall carry and maintain all worker's compensation insurance required by the jurisdiction in which the Leased Premises is located.

9.3 Waiver of Rights of Subrogation. Landlord and Tenant hereby grant to each other, with respect to any insurer providing fire and all-risk coverage to either of them covering the Premises or any part thereof, a mutual waiver of any right of subrogation any such insurer of one party may acquire against the other by virtue of payments of any loss under such insurance, such waiver to be effective so long as each is empowered to grant such waiver under the terms and conditions of its insurance policy or policies involved without payment of additional premiums. Tenant acknowledges that Landlord is not waiving its rights of subrogation with regard to property damage to the Restaurant building. Each party will notify the other in the event of cancellation of such provision, and such waiver shall stand mutually terminated as of the date either Landlord or Tenant ceases to be so empowered.

## ARTICLE X. TAXES AND MAINTENANCE

10.1 Taxes. Landlord and Tenant shall each be responsible for 50% of all real property taxes accruing and due and payable with respect to the Premises while this Lease is in effect. Tenant shall pay all such real property taxes which accrue and are due and payable with respect to the

Premises while this Lease is in effect and Tenant shall thereafter offset 50% of all such real property taxes paid against the next ensuing Rent payments hereunder. Tenant shall also be fully responsible for and pay any and all personal property taxes with respect to any of Tenant's personal property located on or at the Premises.

10.2 Maintenance of Premises. All maintenance and repair costs and obligations associated with the Premises shall be the sole responsibility of Tenant, including but not limited to trash collection, sweeping, snow removal and general maintenance and repair of the Leased Premises and the Restaurant.

#### ARTICLE XI. CONSTRUCTION, CHANGES, ALTERATIONS AND ADDITIONS/COMPLIANCE WITH LAWS

11.1 Alterations to Leased Premises. Tenant shall have the right at any time and from time to time during the Term of this Lease to make any and all changes, alterations and additions to the Leased Premises and all of Tenant's improvements located thereon as Tenant may deem appropriate. No such change, alteration or addition shall be undertaken or commenced, nor shall the renovation of the existing building commence, until Tenant shall have procured and paid for all required permits and licenses of all Governmental Authorities having jurisdiction.

11.2 Restaurant Construction. All work done in connection with the renovation of the existing building and any change, alteration or addition thereto shall be done with reasonable diligence, in a good and workmanlike manner and in compliance with all applicable laws and regulations of all Governmental Authorities having jurisdiction. The cost of such construction and of any such change, alteration or addition shall be paid or discharged by Tenant so that the Leased Premises at all times shall be free of any and all liens resulting therefrom.

#### ARTICLE XII. MECHANIC'S LIENS

12.1 Prohibition of Liens. Unless otherwise provided for herein, Tenant shall pay or cause to be paid all costs for work done by Tenant or which Tenant has caused to be done on the Leased Premises and Tenant shall keep the Leased Premises free and clear of all mechanic's liens and other liens arising from such work. Tenant shall indemnify and hold Landlord harmless from all liability, loss, damage, costs, reasonable attorneys' fees and all other expenses on account of claims of the liens of laborers or materialmen or others for work performed or material or supplies furnished to the Leased Premises for Tenant or persons claiming under Tenant.

12.2 Defense of Liens. Within thirty days after the filing of any mechanic's lien or claim of lien in excess of \$5,000 against the Leased Premises with respect to work performed by Tenant hereunder for which Tenant is responsible, Tenant shall either: (1) have the lien discharged from the Leased Premises by payment or by recording a sufficient bond as provided by law, or; (2) have purchased and delivered to Landlord a title insurance policy insuring Landlord against the lien. If

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a final judgment establishing the validity or existence of a claim or lien for any amount is entered, Tenant shall pay and satisfy the same immediately.

12.3 Failure to Defend Lien. If Tenant shall fail to comply with the requirements of Section 12.2 above, Landlord shall have the right, but not the obligation, to pay the lien or claim of lien, regardless of any dispute over its validity, and the amounts so paid, together with reasonable attorneys' fees and any other costs or expenses incurred in connection with the lien, shall be immediately due and payable from Tenant to Landlord with interest at the rate set forth in Section 6.3 hereof.

12.4 Notice of Lien Claims. Should any lien claims be filed against the Leased Premises or any action affecting the title to the Leased Premises be commenced, the party receiving notice of such lien or action shall forthwith give the other party notice thereof.

12.5 Description of Actionable Lien Claims. All references herein to "lien" or "mechanic's lien" shall refer only to a mechanic's lien or claim of lien which states that work has been completed on the Leased Premises and payment has not been forthcoming, and shall not include any statutory notices of record which are for the sole purpose of stating that work has commenced on the Leased Premises.

### ARTICLE XIII. SIGNS

13.1 Allowable Signage. Tenant shall be allowed to affix and maintain signs advertising the business being conducted thereon anywhere on the Leased Premises as approved from time to time by any requisite governmental agency having jurisdiction without the further approval of any kind by Landlord. Tenant shall have the right to alter or remove the signs initially affixed to or on the Leased Premises without approval of any kind by Landlord.

### ARTICLE XIV. ASSIGNING, MORTGAGING, AND SUBLETTING

14.1 Assignment and Subletting. Except as provided for herein, Tenant shall not assign or transfer this Lease or Tenant's interest in and to the Leased Premises or any part thereof or sublet all or any portion of the Leased Premises without first procuring the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Tenant shall continue to remain liable to Landlord under this Lease. Any attempted transfer, assignment or subletting without the prior written consent of Landlord where such consent is required by this Lease shall be void and confer no rights upon any third person.

14.2 Evidence of Transfer. Each transfer, assignment or subletting to which there has been consent shall be by an instrument in writing in a form and substance satisfactory in Landlord's reasonable judgment. The transferee, assignee or sublessee shall agree in writing for the benefit of Landlord to assume, be bound by and perform the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant hereunder.

14.3 Approved Transfers. Notwithstanding the foregoing, Tenant shall have the right, without Landlord's consent, to assign or transfer this Lease or sublet the Premises or any part thereof to a successor entity of Tenant, to any entity into which or with which Tenant merges or consolidates, to any entity which acquires substantially all of the assets of Tenant, or to any parent, subsidiary, partner, member or affiliated entity, including any entity which is under the control of Tenant or in which Tenant or Good Times Restaurants Inc. has a twenty percent or greater ownership interest, or to any franchisee of Tenant or Good Times Drive Thru Inc.; provided that, at least thirty days prior to the proposed assignment, Tenant shall provide Landlord with written notice of the proposed assignment which shall include sufficient information to indicate that the proposed assignee or subtenant is eligible for assignment or transfer without Landlord's consent pursuant to the terms of this Article XIV, any such assignee or subtenant shall deliver to Landlord a copy of a document satisfactory in Landlord's reasonable judgment under which such assignee or subtenant agrees to assume and perform all of the terms and conditions of this Lease on Tenant's part to be performed from and after the effective date of the assignment or sublease.

#### ARTICLE XV. RESTAURANT, FIXTURES AND PERSONAL PROPERTY

15.1 Tenant to Retain Ownership. All of Tenant's personal property, equipment, fixtures, furniture, inventory and signs within the Restaurant buildings and all other property installed in or on or which is attached or affixed to the Leased Premises by Tenant or at Tenant's expense (collectively "Tenant's Property") shall remain the property of Tenant at all times hereunder, and Tenant shall have the right to remove any and all of Tenant's Property from the Leased Premises at any time and from time to time during or upon the termination of the Term of this Lease without notice to or approval by Landlord. In addition, Tenant shall specifically retain the right to encumber any or all of Tenant's Property or to provide any or all of Tenant's Property as security for any indebtedness without notice to or approval by Landlord. Landlord hereby waives any claim arising by way of any Landlord's lien (whether created by statute or by contract or otherwise) with respect to Tenant's Property and agrees, if confirmation of such waiver is requested by Tenant, to promptly sign and deliver to Tenant, or any secured party designated by Tenant, a waiver of any lien which Landlord may have on Tenant's Property ("Landlord's Lien Waiver"). If such confirmation is requested by Tenant, Landlord agrees to execute and deliver Landlord's Lien Waiver within fifteen days from Tenant's request therefor or Landlord shall be conclusively deemed to have granted confirmation of Landlord's Lien Waiver thereafter and Landlord agrees that Tenant and any secured party may thereafter rely thereon and Landlord shall be estopped from raising any claim on or against Tenant's Property.

#### ARTICLE XVI. TENANT'S RIGHT TO TERMINATE LEASE

16.1 Tenant's Termination Right. Tenant shall have the right at any time during and after the tenth Lease Year of the Term to terminate the Lease by giving a minimum of thirty days' prior written notice thereof to Landlord setting forth the effective date of such termination (which shall be at least thirty days after the date of such notice but no sooner than the end of the tenth Lease Year), in which event neither party shall have any further rights or obligations hereunder after such

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effective date except for amounts payable or receivable which have theretofore accrued hereunder and remain unpaid.

16.2 Landlord's Termination Right. Commencing with the tenth Lease Year and at any time thereafter, Landlord shall have the right, subject to the restrictions set forth below, to terminate this Lease by giving a minimum of 365 days' prior written notice thereof to Tenant setting forth the effective date of such termination (which shall be at least 365 days after the date of such notice and in no event sooner than the end of the tenth Lease Year), in which event neither party shall have any further rights or obligations hereunder after such effective date except for amounts payable or receivable which have theretofore accrued hereunder and remain unpaid. Notwithstanding the foregoing, Landlord's termination right may only be exercised hereunder prior to January 1, 2016 if Landlord has a legitimate need for the use of the Leased Premises for construction of a new road intersection or for any legitimate reason of public safety. After January 1, 2016, Landlord may terminate the Lease under this Section 16.2 for any reason.

#### ARTICLE XVII. DESTRUCTION OF RESTAURANT

17.1 Election to Terminate Lease. In the event that more than thirty percent of the then replacement value of the Restaurant is destroyed at any time during or after the third Lease Year of the Term, Tenant may at its option elect to terminate this Lease by giving written notice of such termination to Landlord within thirty days after such destruction, in which event this Lease shall terminate upon the giving of such notice. All insurance proceeds from policies covering the Restaurant and improvements that are carried by Tenant shall be payable to Tenant. In such event, Tenant, at its expense, shall promptly remove or demolish the Restaurant and neither party shall thereafter have any further rights or obligations hereunder.

#### ARTICLE XVIII. BANKRUPTCY - INSOLVENCY

18.1 Proceedings and Remedies. In the event all or substantially all of Tenant's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of ninety days, or if Tenant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt, or if Tenant institutes any proceedings under the Bankruptcy Code as the same now exists or under any amendment thereof which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or should any involuntary proceedings commenced against Tenant not be removed or dismissed within one hundred twenty days after such proceedings are filed, then this Lease or any interest in and to the Leased Premises shall not become an asset in any of such proceedings. In any such event and in addition to any and all rights or remedies of Landlord hereunder or by law provided, it shall be lawful for Landlord to declare the Term hereof ended and to re-enter the Leased Premises and take possession thereof and remove Tenant's Property (subject to Section 15.1), the Restaurant and all persons therefrom, and Tenant shall have no further claim thereon or hereunder.

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**ARTICLE XIX.  
DEFAULTS/REMEDIES**

19.1 Events of Default. If default shall be made in the payment of any sum required to be paid by Tenant under this Lease, and such default shall continue for a period of ten days after written notice thereof given by Landlord to Tenant, or if default shall be made in the performance of any of the other covenants or conditions which Tenant is required to observe and perform hereunder, excluding a default in payment of sums, and such default shall continue for a period of thirty days after written notice thereof given by Landlord to Tenant, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and thereupon at its option may, without further notice or demand of any kind to Tenant or any other person, exercise any one or more of the following described remedies, in addition to all other rights and remedies provided at law or in equity.

(a) Landlord may re-enter the Leased Premises with or without process of law and take possession of the Leased Premises and expel or remove Tenant and all other persons occupying the Leased Premises, using such force as may be reasonably necessary, without being liable for the re-entry or for the use of force.

(b) Without terminating this Lease, Landlord may at any time and from time to time remove all Tenant's Property (subject to Section 15.1 hereof) and relet the Leased Premises or any part thereof for such term (which may extend beyond the Term of this Lease) upon such conditions and at such rental as Landlord may reasonably deem proper. Landlord may collect the rent from any reletting and apply it against amounts due from Tenant hereunder (including without limitation such expenses as Landlord may have incurred in recovering possession of the Leased Premises, reletting, removal of Tenant's Property, and all other expenses, commissions and charges, including reasonable attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and reletting). Landlord may execute any lease made pursuant hereto in Landlord's name or in the name of Tenant as Landlord may see fit, and the lessee thereunder shall have no obligation to see to the application by Landlord of any amounts collected by Landlord, and Tenant shall have no right to collect any amounts thereunder. Whether or not the Leased Premises are relet, Tenant shall pay Landlord all amounts required to be paid by Tenant up to the date of Landlord's re-entry, and thereafter Tenant shall pay Landlord, until the end of the Term hereof, the amount of all Rental and other charges required to be paid by Tenant hereunder, less the proceeds of such reletting during the Term hereof, if any, after payment of Landlord's expenses as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord shall not, by any re-entry or other act, be deemed to have terminated this Lease or the liability of Tenant for the total Rental and other amounts due hereunder unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease. In the event the avails of reletting exceed the amounts for which Tenant is liable, Tenant shall not be entitled to receive any excess.

(c) Landlord may terminate this Lease by written notice to Tenant regardless of whether Landlord previously exercised its right of re-entry without terminating the Lease. In such event, Landlord shall thereupon be entitled to recover from Tenant all amounts incurred by Landlord

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to recover possession and all amounts owed by Tenant prior to the date of termination plus the worth, at the time of such termination, of Landlord's prospective damages, which shall include the excess of the Rental and other charges required to be paid by Tenant for the balance of the Term hereof (if this Lease had not been so terminated) over the then prevailing rental value of the Leased Premises as it exists on the date of termination.

(d) In the event that Landlord gives Tenant notice of Tenant's failure to perform a non-monetary obligation hereunder, and Tenant cannot reasonably remedy such failure within such the thirty-day period established by Section 19.1, then Landlord shall not declare Tenant to be in default so long as Tenant, after receiving such notice, proceeds to take all reasonable steps necessary to remedy the same within a period of time which, under all prevailing circumstances shall be reasonable. Landlord shall not declare Tenant to be in default if and so long as Tenant shall be proceeding to remedy the same in good faith or Tenant is delayed in or prevented from remedying the same by any cause specified in Section 23.4 hereof.

(e) Notwithstanding anything to the contrary contained in this Article XIX, under the circumstances where Landlord re-enters and takes possession of the Leased Premises, Landlord shall have no right whatsoever to the use of the trade name "Good Times" or any right whatsoever to use any items or supplies labelled with the "Good Times" logo. Landlord shall also have a duty to use its best efforts to mitigate its damages in connection with any default by Tenant.

## ARTICLE XX. CONDEMNATION

20.1 Rights of Landlord and Tenant under Eminent Domain. If any portion of the Premises is taken by appropriation for public use under right of eminent domain, or if a voluntary conveyance is made to the condemning authority in lieu of eminent domain proceedings, Landlord and Tenant agree that their respective rights shall be as follows:

(a) In the event that a taking occurs which, in the reasonable judgment of Tenant does not substantially impair the use of the Premises, Landlord shall be entitled to retain the entire proceeds from the eminent domain proceeding (except for any portion attributable to Tenant's Property as defined in Article XV, the Restaurant or damage to or interruption of Tenant's business), and Landlord shall be obligated to repair or restore the Leased Premises required by any alteration or damage resulting from such taking. Landlord shall provide notice of such taking to Tenant within thirty days of such taking, but notice shall be given no later than the date title vests in the condemning authority. Upon vesting of title in the condemning authority or at such time as the condemning authority takes actual possession of the Premises, whichever is earlier, there shall be a pro rata reduction in Rental based upon the ratio which the gross sales producing capacity of the uncondemned portion of the Premises bears to the gross sales producing capacity of the original Premises. The reduced Rental payable by Tenant shall be paid during such period of time, if any, as Tenant is unable to conduct its business at the Premises by reason of any such repair or restoration work and throughout the remainder of the Term of this Lease.

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(b) In the event a taking occurs which, in the reasonable judgment of Tenant, substantially impairs the use of the Premises, Tenant shall have the right to terminate this Lease upon thirty days' notice to Landlord, but notice shall be given no later than the date title vests in the condemning authority.

20.2 Allowable Claims of Tenant. In no event shall Tenant have any claim against Landlord for any portion of the award paid by the condemning authority as a result of a taking of any portion of the Leased Premises or conveyance thereof under threat of condemnation, and Tenant does hereby assign to Landlord all of Tenant's right, title and interest in and to any and all amounts so paid or awarded except for any award made specifically to Tenant by the condemning authority, which Landlord agrees Tenant may pursue, for loss or interruption of Tenant's business, for the value of Tenant's Restaurant and Tenant's Property, for the cost of moving all of the same, for the unamortized cost of the Restaurant and Tenant's Property paid for by Tenant and depreciated on a straight-line basis over the term of this Lease and for the value of Tenant's interest under this Lease.

## ARTICLE XXI.

### REPRESENTATIONS, WARRANTIES AND INDEMNITIES OF LANDLORD

21.1 Reimbursement of Certain Costs and Expenses. On or before the Term Commencement Date Landlord shall fully reimburse Tenant for all of its costs and expenses incurred in connection with the preparation of an ALTA survey and for Phase I and Phase II environmental testing and audit reports with respect to the Premises. Tenant shall deliver invoices for such costs and expenses to Landlord within ten days prior to the Term Commencement Date. If Landlord fails to pay any such costs and expenses on or before the Term Commencement Date, Tenant shall have the right to setoff such unpaid costs and expenses from the Rental owed to Landlord by Tenant hereunder.

21.2 No Competition. As a material inducement for Tenant to enter into this Lease, Landlord acknowledges and agrees that any property owned or leased by Landlord on U.S. Highway 287 or U.S. Highway 34 and located within one-half mile of the Leased Premises shall not, during the Term of this Lease or if sooner, January 1, 2016, be sold, leased, managed, occupied or used for a restaurant or food service business primarily engaged in the sale of hamburgers, cheeseburgers or chicken burgers. Landlord shall advise Tenant of any such property and shall deliver to Tenant within thirty days after the satisfaction or waiver of Tenant's Conditions Precedent documentation in recordable form containing such restriction on any such property, and Landlord shall be subject to a continuing obligation to deliver similar documentation in recordable form to bind subsequently acquired or leased property which falls within such restricted area prior to January 1, 2016. The document shall indicate that the restriction on any such property shall terminate on January 1, 2016 or at such earlier time as this Lease expires or is terminated. The provisions of this paragraph shall not apply to any Dairy Queen restaurant or Dairy Queen food service business currently located within one-half mile of the Leased Premises or re-located to any property owned or leased by Landlord within one-half mile of the Leased Premises.

21.3 Visibility and Access. Landlord hereby represents and warrants to Tenant that Landlord will undertake no action or enter into any agreement during the Term hereof which would

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materially reduce or hinder the vehicular access to the Leased Premises from adjacent public streets or rights-of-way without the prior written consent of Tenant. Both Landlord and Tenant recognize the preeminent authority of the Colorado Department of Transportation regarding access to U.S. Highway 287 and U.S. Highway 34 and nothing in this paragraph shall be construed to prohibit Landlord from entering into any agreement requested or required by the Colorado Department of Transportation which may limit such access.

21.4 Landlord's Authorization. Landlord has full capacity, right, power and authority to execute, deliver and perform this Lease and all documents to be executed by Landlord pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. This Lease and all documents to be executed pursuant hereto by Landlord are and shall be binding upon and enforceable against Landlord in accordance with their respective terms. The individual signing this Lease on behalf of Landlord is duly authorized to execute and deliver the Lease as a binding obligation of Landlord.

## ARTICLE XXII. TENANT'S PURCHASE RIGHT

22.1 Right to Purchase Leased Premises. Tenant shall have the preemptive right during the Term and any extension thereof to purchase the Leased Premises from Landlord for the purchase price of \$300,000 at any time that Landlord desires to sell the Leased Premises. Before making any sale or any agreement to sell the Leased Premises, Landlord shall notify Tenant in writing of its intention to sell the Leased Premises. Tenant, within sixty days after receipt of such notice, may exercise its preemptive right to purchase the Leased Premises for \$300,000 by written notification thereof to Landlord. The closing of Tenant's purchase of the Leased Premises must occur within 120 days after Tenant's notification to Landlord, with the actual date to be determined by Tenant in its sole discretion. Notwithstanding the foregoing, Tenant's preemptive right to purchase the Leased Premises pursuant to this section shall apply only so long as Landlord is the City of Loveland. At such time as either Tenant purchases the Leased Premises or Landlord sells the Leased Premises after Tenant has refused to exercise its right to purchase hereunder, this Section 22.1 shall become null and void and have no further force or effect.

## ARTICLE XXIII. MISCELLANEOUS

23.1 Quiet Enjoyment - Covenants. Tenant, upon payment of all Rental due and observing and keeping all the covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Leased Premises during the Term of this Lease, without hindrance or molestation by anyone claiming by, from, through or under Landlord, subject and subordinate, however, to the exceptions, reservations and conditions of this Lease.

23.2 Notices and Payment of Rent. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other party, such notice or demand shall be given or served by personal delivery or by certified or

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registered mail, return receipt requested, postage prepaid, or by facsimile transmission addressed as follows:

IF TO LANDLORD: City of Loveland  
Civic Center  
500 East Third Street  
Loveland, Colorado 80537  
Facsimile: (970) 962-2900

WITH A COPY TO:  
(which shall not constitute notice) City Manager  
City of Loveland  
Civic Center  
500 East Third Street  
Loveland, Colorado 80537  
Facsimile: (970) 962-2900

IF TO TENANT: The Bailey Company  
c/o Bill Whitehurst, CFO  
601 Corporate Circle  
Golden, CO 80401  
Facsimile: (303) 384-0223

WITH A COPY TO:  
(which shall not constitute notice) Paul A. Jacobs, Esq.  
Jacobs Chase Frick Kleinkopf & Kelly LLC  
1050 17<sup>th</sup> Street, Suite 1500  
Denver, CO 80265  
Facsimile: (303) 685-4869

Every notice, demand, request or communication hereunder which is given by personal delivery shall be deemed given as of the date and time of such personal delivery, and every notice, demand, request or communication hereunder sent by mail in the manner described above shall be deemed to have been given or served three days after mailing, and every notice, demand, request or communication hereunder sent by facsimile transmission shall be deemed to have been given or served upon receipt of confirmation of such transmission. All Rental and other payments shall be either delivered or sent by first-class mail and paid by Tenant to Landlord at the address above provided. Either party may change its address by giving notice to the other parties in the manner described in this Section 23.2.

23.3 Obligations of Successors. The parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

23.4 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the

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reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to Rental and other amounts to be paid by Tenant pursuant to this Lease. It is expressly agreed that any other time limit provision contained in this Lease shall be extended for the same period of time lost by causes hereinabove set forth.

23.5 Holding Over. It is hereby agreed that, in the event of Tenant holding over after termination of this Lease with the consent of Landlord, the tenancy thereafter shall be from month-to-month in the absence of a written agreement to the contrary, and such month-to-month tenancy shall be terminable on thirty day's notice given by either Landlord or Tenant. During such month-to-month tenancy, Tenant shall pay to Landlord rent equal to the monthly payment of Rental paid in the previous Lease Year. Any month-to-month tenancy hereunder shall be subject to all other terms and conditions of this Lease except Rental and any rights of renewal, and nothing contained in this Section 23.5 shall be construed to limit or impair any of Landlord's rights of re-entry set forth herein or constitute a waiver thereof.

23.6 Estoppel Certificates. At any time and from time to time, Landlord on at least seven days' prior request by Tenant, and Tenant, on at least seven days' prior request by Landlord, will deliver to the party making such request a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications, that the same is in full force and effect as modified and stating the modifications), any other statements typically found in such estoppel certificate which Landlord or Tenant may reasonably request and the date to which the Rental and any other deposits or charges have been paid and stating whether or not to the best knowledge of the party executing such certificate, the party requesting such statement is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the executing party may have knowledge.

23.7 Entire Agreement. This Lease contains the entire agreement between the parties with respect to this matter, and supersedes any previous agreements between the parties and may be changed, modified or terminated only by a written agreement signed by both parties hereto.

23.8 Memorandum of Lease. Landlord and Tenant agree that this Lease shall not be recorded but that a Memorandum of Lease in the form attached hereto as Exhibit B shall be executed upon execution of this Lease and it may thereafter be recorded by either Landlord or Tenant.

23.9 Waiver. No waiver of any condition or any legal right or remedy shall be implied by the failure to declare a forfeiture or for any other reason, and no waiver of any condition or covenant shall be valid unless it is in writing and signed by the waiving party. No waiver by either party of any covenant or condition herein shall constitute a waiver of any further breach or continuance of the same condition or covenant or any other condition or covenant.

23.10 Subordination. This Lease shall be subject and subordinate to any mortgage or deed of trust hereafter encumbering the Land or any portion thereof but only if such mortgage or deed of trust or a separate agreement in recordable form between the mortgagee and Tenant shall provide that, so long as Tenant shall faithfully discharge the obligations on its part to be kept and performed

under the terms of this Lease, Tenant's tenancy will not be disturbed nor this Lease affected by any default or foreclosure under the mortgage or deed of trust, provided that Tenant agrees in such written agreement to recognize as Landlord and attorn to the party acquiring title by virtue of a foreclosure of such mortgage or deed of trust or deed given in lieu thereof. The form of such agreement shall be as is reasonably required by such mortgagee and reasonably acceptable to Tenant. While the provisions hereof are self-operative, Tenant agrees, within ten days from request therefor, to execute and deliver to any such mortgagee or Landlord such agreement in recordable form as such mortgagee shall reasonably request and as is reasonably acceptable to Tenant to evidence such subordination so long as such agreement contains the non-disturbance provision referred to above.

23.11 Brokers. Landlord hereby indemnifies and agrees to hold Tenant harmless from and against any and all claims for any brokerage, real estate, finder's or agent's fees or commissions in connection with or arising out of the leasing of the Leased Premises. Tenant represents and warrants that it has dealt with no broker, firm or real estate agent in this transaction.

23.12 Litigation. In the event of litigation between the parties to construe or enforce this Lease, the prevailing party shall be entitled to reimbursement from the non-prevailing party of the reasonable legal fees and other costs incurred by such prevailing party in connection with such litigation.

23.13 Severability. If any term or provision of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

23.14 No Joint Venture. This Lease shall not be deemed or construed to create or establish any relationship of partnership or joint venture between Landlord and Tenant, the sole relationship between the parties being that of landlord and Tenant.

23.15 Successors And Assigns. This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns and shall be binding upon and inure to the benefit of Tenant, its successors and assigns.

23.16 Applicable Law. All rights and remedies of Landlord under this Lease shall be construed and enforced according to the laws of the State of Colorado.

23.17 Time Of The Essence. Time is of the essence of each and every covenant herein contained.

23.18 Lease Information Summary. The Lease Information Summary, attached hereto, is an integral part of the terms and conditions of this Lease and is incorporated herein by this reference as though fully set forth. The information contained in the Lease Information Summary shall be binding upon Landlord and Tenant upon execution of this Lease as though such information were set forth in the body of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

**LANDLORD:**

CITY OF LOVELAND

By: Kathleen R. Gilliland  
Name Printed: Kathleen R. Gilliland  
Title: Mayor  
Date: 2/26/98

**APPROVED AS TO FORM**  
BY: Jane S. Grantzani  
CITY ATTORNEY

**TENANT:**

THE BAILEY COMPANY,  
a Colorado limited partnership

By: The Erie County Investment Co.,  
its General Partner

By: William D. Whithurst  
Name Printed: William D. Whithurst  
Title: CFO/VP  
Date: 2-20-98

By its execution below, the undersigned agrees to guarantee the obligations of Tenant hereunder for the first ten Lease Years.

GOOD TIMES RESTAURANTS INC.

By: Ray E. Sobach  
Title: President / CEO

**EXHIBIT A**

**Legal Description of Leased Premises**

LOTS 11, 12, 13, 14, 15 AND 16, BLOCK 3, LOVELAND HEIGHTS ADDITION  
TO THE CITY OF LOVELAND, ACCORDING TO THE RECORDED PLAT  
THEREOF, COUNTY OF LARIMER, STATE OF COLORADO.

November 15, 2007

City Manager  
City of Loveland  
Civic Center  
500 East Third Street  
Loveland, CO 80537

Re: Lease by and Between The City of Loveland (the "Landlord") and The Bailey Company, LLLP, (the "Tenant") dated February 26, 1998, (the "Lease") for Good Times Unit #135 located at 1355 Lincoln Avenue, Loveland, CO (the "Premises").

Dear City Manager:

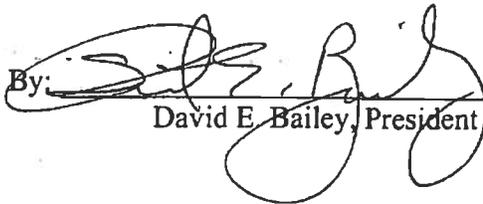
This letter hereby confirms that The Bailey Company exercise its option under the Lease to extend the Lease for an additional five (5) years effective March 30, 2008 and runs through March 29, 2013. It is understood that during the extended term of this Lease all covenants, conditions, and terms of the Lease shall apply and remain the same.

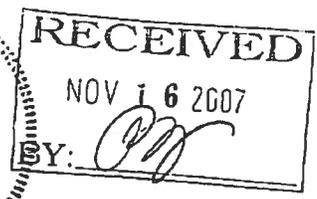
Please acknowledge your receipt by signing below and returning one copy to our office.

Sincerely,

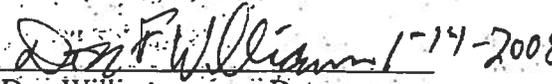
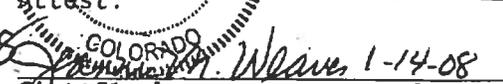
TENANT: The Bailey Company, LLLP  
a Colorado limited liability limited partnership

By: The Erie County Investment Co.,  
it's general partner

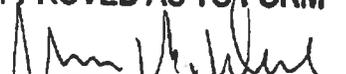
By:   
David E. Bailey, President



LANDLORD: City of Loveland

BY:  1-14-2008  
Don Williams Date  
City Manager  
 Weaver 1-14-08  
City Clerk Date

APPROVED AS TO FORM

BY:   
CITY ATTORNEY



Our Vision: To Make a Positive Difference in the Lives of Others by Running Great Restaurants. Our Mission: We Will Delight You.



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

**AGENDA ITEM:** 8  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Keith Reester, Public Works Director  
 Gary Havener, Parks & Recreation Director  
**PRESENTER:** Dave Klockeman, City Engineer

**TITLE:**

A resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Department of Transportation, for design and construction of a new bridge and recreation trail underpass at the intersection of Madison Avenue and the Chubbuck Ditch

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution

**DESCRIPTION:**

This is an administrative action. The resolution authorizes the City Manager to execute a grant agreement with the State of Colorado. This grant will partially fund the replacement of the bridge on Madison Avenue at the Chubbuck Ditch.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The estimated cost of this project is \$1.375 million. Award of three federal grants in 2009, 2010, and 2011 will provide \$848,000, leaving a local match of \$527,000. The local funds will come from the Parks and Recreation Department 2013 budget, which includes \$300,000 from recreation trail capital expansion fee funds, and the Public Works Department 2013 budget, which includes \$280,000 from street general funds.

**SUMMARY:**

The need for this capital project was identified in 2000 and listed in the 2020 Transportation Master Plan. The existing bridge is structurally deficient. This project will replace and widen the existing bridge. The need for an underpass is identified in the 2001 Parks and Recreation Master Plan to improve safety for the City's recreation trail. The underpass will eliminate the existing uncontrolled trail crossing on Madison Avenue south of the bridge. Project completion is targeted for April, 2013.

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REVIEWED BY CITY MANAGER: *William D. Cahill*

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**LIST OF ATTACHMENTS:**

Resolution

Intergovernmental Agreement (attached to the Resolution as Exhibit A)

**RESOLUTION #R-57-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION, FOR DESIGN AND CONSTRUCTION OF A NEW BRIDGE AND RECREATION TRAIL UNDERPASS AT THE INTERSECTION OF MADISON AVENUE AND THE CHUBBUCK DITCH**

**WHEREAS**, the City of Loveland desires to design and construct a new bridge and recreation trail underpass at the intersection of Madison Avenue and the Chubbuck Ditch (the “Project”); and

**WHEREAS**, the Project is to be funded, in part, by federal-aid funds administered and made available through the State of Colorado, acting by and through the Department of Transportation (“CDOT”), in the amount of \$848,000; and

**WHEREAS**, the Project is to be funded, in part, by City dollars in the amount of \$212,000 (“Local Match”), to be committed at project inception upon signature of an agreement between CDOT and the City, and an amount not to exceed \$315,000 (“Local Overmatch”), to be committed at a later date by amendment to the agreement; and

**WHEREAS**, both the Local Match and the Local Overmatch have been appropriated and budgeted for the Project; and

**WHEREAS**, the City and CDOT desire to enter into an agreement to define the division of responsibilities with regard to the Project; and

**WHEREAS**, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the “State of Colorado Department of Transportation Agreement with City of Loveland” for Project No. BRO M830-55 (17906), attached hereto as Exhibit A and incorporated herein by reference (“Agreement”), is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City.

**Section 4.** That the City Manager and the City Clerk are hereby authorized and directed, following consultation with the City Attorney, to execute at a later date, on behalf of the City, an amendment to the Agreement or an Option Letter, the form of which is set forth in Exhibit D to the Agreement, to add the Local Overmatch to the Agreement in an amount not to exceed \$315,000.

**Section 5.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21<sup>st</sup> day of August, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

# EXHIBIT A

(FMLAWRK)  
PROJECT # BRO M830-055(17906)  
REGION #4 (PCO)

Rev 7/8/09  
Routing # 13 HA4 26363  
SAP O/L# 331000384

## STATE OF COLORADO Department of Transportation Agreement with City of Loveland

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**1. PARTIES**

THIS AGREEMENT is entered into by and between **City of Loveland**, (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS****A. Authority, Appropriation, And Approval**

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

**Federal Authority**

Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21<sup>st</sup> Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

**State Authority**

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

**C. Purpose**

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA. This project is for the installation of automatic flashing light crossing signals with gates and catilevers on Harmony Road; M.P. 26.58 in the City of Fort Collins. All work is to be completed by Union Pacific Rail Road Company.

**D. References**

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

**A. Agreement or Contract**

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

**B. Agreement Funds**

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement.

**C. Budget**

"Budget" means the budget for the Work described in Exhibit C.

**D. Consultant and Contractor**

"Consultant" means a professional engineer or designer hired by Local Agency to design the Work and "Contractor" means the general construction contractor hired by Local Agency to construct the Work.

**E. Evaluation**

"Evaluation" means the process of examining the Local Agency's Work and rating it based on criteria established in §6 and Exhibits A and E.

**F. Exhibits and Other Attachments**

The following exhibit(s) are attached hereto and incorporated by reference herein: Exhibit A (Scope of Work), Exhibit B (Resolution), Exhibit C (Funding Provisions), Exhibit D (Option Letter), Exhibit E (Checklist), Exhibit F (Certification for Federal-Aid Funds), Exhibit G (Disadvantaged Business Enterprise), Exhibit H (Local Agency Procedures), Exhibit I (Federal-Aid Contract Provisions), Exhibit J (Federal Requirements) and Exhibit K (Supplemental Federal Provisions).

**G. Goods**

"Goods" means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

**H. Oversight**

"Oversight" means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration ("FHWA") and as it is defined in the Local Agency Manual.

**I. Party or Parties**

"Party" means the State or the Local Agency and "Parties" means both the State and the Local Agency

**J. Work Budget**

Work Budget means the budget described in Exhibit C.

**K. Services**

"Services" means the required services to be performed by the Local Agency pursuant to this Contract.

**L. Work**

"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and Exhibits A and E, including the performance of the Services and delivery of the Goods.

**M. Work Product**

"Work Product" means the tangible or intangible results of the Local Agency's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

**5. TERM and EARLY TERMINATION.**

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

**6. SCOPE OF WORK**

**A. Completion**

The Local Agency shall complete the Work and other obligations as described herein in Exhibit A. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

## **B. Goods and Services**

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

## **C. Employees**

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

## **D. State and Local Agency Commitments**

### **i. Design**

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

### **ii. Local Agency Work**

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
  - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
  - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
  - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

(6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

#### **Construction**

a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23

C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

#### **State's Commitments**

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**,

#### **ROW and Acquisition/Relocation**

a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/)) and reimbursement for the levels will be under the following categories:

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

#### Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

#### Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

- a) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b) Obtain the railroad's detailed estimate of the cost of the Work.
- c) Establish future maintenance responsibilities for the proposed installation.
- d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

#### Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

#### Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

### 7. OPTION LETTER MODIFICATION

Option Letters may be used to extend Agreement terms, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are limited to the specific scenarios listed below. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

#### A. Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the

executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2, C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

**B. Option 2 – Option to add overlapping phase without increasing contract dollars.**

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

**C. Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.**

This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

## **8. PAYMENTS**

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

### **A. Maximum Amount**

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

### **B. Payment**

#### **i. Advance, Interim and Final Payments**

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

### **Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest

on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

**Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**Erroneous Payments**

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**C. Use of Funds**

Contract Funds shall be used only for eligible costs identified herein.

**D. Matching Funds**

The Local Agency shall provide matching funds as provided in §8.A. and Exhibit C. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in Exhibit C has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

**E. Reimbursement of Local Agency Costs**

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in Exhibit C and §8. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

**i. Reasonable and Necessary**

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

**ii. Net Cost**

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

## 9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

### A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

### B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

### C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

### D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

### E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

### F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

## 10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

### A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

### B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

**C. Noncompliance**

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

**D. Documents**

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

**11. LOCAL AGENCY RECORDS**

**A. Maintenance**

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

**B. Inspection**

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

**C. Monitoring**

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

**D. Final Audit Report**

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

**12. CONFIDENTIAL INFORMATION-STATE RECORDS**

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

**A. Confidentiality**

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

**B. Notification**

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

**C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

**D. Disclosure-Liability**

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

**13. CONFLICT OF INTEREST**

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

**14. REPRESENTATIONS AND WARRANTIES**

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

**A. Standard and Manner of Performance**

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

**B. Legal Authority – The Local Agency and the Local Agency's Signatory**

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the

State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

**15. INSURANCE**

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

**A. The Local Agency**

**i. Public Entities**

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

**ii. Non-Public Entities**

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

**B. Contractors**

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

**i. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

**ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000

any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

**iii. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**iv. Additional Insured**

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

**16. DEFAULT-BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**17. REMEDIES**

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the

notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Cause and/or Breach**

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

**1. Obligations and Rights**

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

**2. Payments**

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

**3. Damages and Withholding**

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

#### **Obligations and Rights**

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

#### **Payments**

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

#### **C. Remedies Not Involving Termination**

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

##### **I. Suspend Performance**

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

#### **Withhold Payment**

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

#### **Deny Payment**

Deny payment for those obligations not performed that due to the Local Agency's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

#### **Removal**

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

#### **Intellectual Property**

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

#### **18. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Tim Tuttle
Region 4 – Traffic
CDOT
1420 2 <sup>nd</sup> Street
Greeley, CO 80631
(970)350-2211
Tim.tuttle@dot.state.co.us

**B. Local Agency:**

Frank B. Hempen
City of Loveland
410 East Fifth Street
Loveland, CO 80537
(970)962-2908
hempef@ci.loveland.co.us

**19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

**20. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

**21. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado

Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

## **22. FEDERAL REQUIREMENTS**

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in Exhibit J and Exhibit K.

## **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Local Agency will comply with all requirements of Exhibit G and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

## **24. DISPUTES**

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## **25. GENERAL PROVISIONS**

### **A. Assignment**

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. Binding Effect**

Except as otherwise provided in §25(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### **D. Counterparts**

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

**F. Indemnification - General**

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

**G. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**H. Limitations of Liability**

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

**I. Modification**

**i. By the Parties**

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

**By Operation of Law**

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

**J. Order of Precedence**

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

**I. Colorado Special Provisions,**

The provisions of the main body of this Agreement,  
**Exhibit A** (Scope of Work),  
**Exhibit B** (Local Agency Resolution),  
**Exhibit C** (Funding Provisions),  
**Exhibit D** (Option Letter),  
**Exhibit E** (Local Agency Contract Administration Checklist),  
 Other exhibits in descending order of their attachment.

**K. Severability**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

**L. Survival of Certain Agreement Terms**

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

**M. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

**N. Third Party Beneficiaries**

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

**O. Waiver**

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

## 26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

### 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

### 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

### 4. INDEPENDENT CONTRACTOR

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### 5. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

### 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

### 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

### 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

[*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

**27. SIGNATURE PAGE**

Agreement Routing Number 13 HA4 26363

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**\* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

**THE LOCAL AGENCY  
City of Loveland**

By: \_\_\_\_\_  
Name of Authorized Individual

Title: \_\_\_\_\_  
Official Title of Authorized Individual

\_\_\_\_\_  
\*Signature

Date: \_\_\_\_\_

2nd The Local Agency Signature if Needed

By: \_\_\_\_\_  
Name of Authorized Individual

Title: \_\_\_\_\_  
Official Title of Authorized Individual

\_\_\_\_\_  
\*Signature

Date: \_\_\_\_\_

**STATE OF COLORADO**

**John W. Hickenlooper, GOVERNOR**  
Colorado Department of Transportation  
Donald E. Hunt, Executive Director

By: Timothy J. Harris, P.E., CDOT Chief Engineer

Date: \_\_\_\_\_

**LEGAL REVIEW**

**John W. Suthers, Attorney General**

By: \_\_\_\_\_  
Signature - Assistant Attorney General

Date: \_\_\_\_\_

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER  
David J. McDermott, CPA**

By: \_\_\_\_\_

Colorado Department of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM  
BY: *[Signature]*  
ASSISTANT CITY ATTORNEY

**28. EXHIBIT A – SCOPE OF WORK**

<b>COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA</b>		Orig. Date: 05/12/2010		Project Code # (SA#): 17906		STIP#: SR46601	
		Rev. Date:		Project #: BRO M830-055			
		Revision #: 0		PE Project Code:			
		Region #: 04		Project Description: Madison Ave Bridge - Loveland			
Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised							
Submitted By PM: TUTTLET				Approved by Program Engineer:			
Date:				Municipality: Loveland			
Revised by:				System Code: Z-NoI on any Federal-Aid Highway			
Date:				Oversight By: A-Exempt			
				Planned Length: 0.500			
Geographic Location: NORTH MADISON AVE N/O WEST 1ST ST IN LOVELAND							
Type of Terrain: Urban							
Description of Proposed Construction/Improvement (Attach map showing site location) <b>OFF SYSTEM BRIDGE REPLACEMENT</b>							
<b>1 Project Characteristics (Proposed)</b>				Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None			
<input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input checked="" type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input checked="" type="checkbox"/> Sidewalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):				<input type="checkbox"/> Traffic Control Signals <input checked="" type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Other (description): Bridge Replacement on Madison Avenue in the City of Loveland			
<b>2 Right of Way</b>			Yes/No	Est. #	<b>3 Utilities (list names of known utility companies)</b>		
ROW &/or Perm. Easement Required			No	_____			
Relocation Required			No	_____			
Temporary Easement Required:			No	_____			
Changes in Access:			No	_____			
Changes to Connecting Roads:			No	_____			
<b>4 Railroad Crossings</b> # of Crossings:							
Recommendations :							
<b>5 Environmental</b>		Type:	Approved On:	Project Code # Cleared Under:	Project # Cleared Under:		
		None	11				
Comments:							
<b>6 Coordination</b>							
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office						Irrigation Ditch Name:	
<input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance						Municipality: Loveland	
Other:							
<b>7 Construction Method</b>		Advertised By:	NoAd Reason:	Entity / Agency Contact Name:		Phone #:	
		Local		Ross Shaw Greg Muhonen		970-962-2636	
<b>8 Safety Considerations</b>				Project Under:		Guardrail meets current standards: No	
<input type="checkbox"/> Variance in Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge (see item 12) <input type="checkbox"/> See Remarks				<input type="checkbox"/> Safety project not all standards addressed		Comments:	
<input type="checkbox"/> Stage Construction (explain in remarks)							
3R projects Safety Evaluation Complete (date):							

Page 2 of 3		Project Code #(SA#): 17906		Project #: BRO M830-055		Revise date:	
Use Columns A, B, C, D and/or E to identify facility described below							
A =		B =		C =		D =	
E =							
<b>9 Traffic</b>							
Current Year	ADT						
	DHV						
	DHV % Trucks						
Future Year	ADT						
	DHV						
Facility Location		<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial
		<input type="checkbox"/> Residential	<input type="checkbox"/> Other	<input type="checkbox"/> Residential	<input type="checkbox"/> Other	<input type="checkbox"/> Residential	<input type="checkbox"/> Other
<b>10 Roadway Class</b>							
Route							
Relpt	0.000						
Entrelpt	0.000						
Functional Classification	R						
Facility type	U						
Rural Code	2						
Design Standards		Standard	Existing	Standard	Existing	Standard	Existing
		Ultimate	Proposed	Ultimate	Proposed	Ultimate	Proposed
Design Variance Required (substandard items are identified with an * in 1 <sup>st</sup> column & clarify as design variance with CDOT Form #464)							
Width of Travel Lanes							
Shoulder width litoutside							
Shoulder width rtoutside							
Design Speed							
Cross Slope							
Max. superelevation rate							
Min. Radius							
Min. Horizontal SSD							
Min. Vertical SSD							
Max Grade							
Design Decision Letter Required (substandard items are identified with an * in 1 <sup>st</sup> column & clarify with decision letter)							
Typical Section Type							
# of Travel Lanes							
Side Slope Dist. (Z)							
Median Width							
Posted Speed							

Page 3 of 3	Project Code #(SA#): 17906	Project #: BRO M830-055	Revise Date:	
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**12 Major Structures** S= to stay, R= to be removed, P= proposed new structure

Structure ID#	v	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
---------------	---	--------	-----------------	---------------------	----------------	-------------------	---------------------	----------------------	--------------------	------------

Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

**13 Remarks**

City of Loveland is responsible for design, ROW, utilities, environmental, ad, award, and construction management.

This project will design and reconstruct Bridge No LOV850MADISONAV on Madison Avenue in the City of Loveland. The ultimate street section will consist of two travel lanes, a 4 foot median, two five foot bike lanes, curb, gutter, and sidewalk. The proposed approach street will have a width of fifty feet flow-line to flow-line. The project is expected to be complete by May 2013. The project will be designed and constructed in accordance with all State and Federal requirements as identified in the IGA between CDOT and the City of Loveland.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION

**29. EXHIBIT C – FUNDING PROVISIONS**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,060,000.00 which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>				
a. Federal Funds				
(80.00% of Participating Costs)				\$848,000.00
b. Local Agency Matching Funds				\$212,000.00
(20.00% of Participating Costs)				
<b>TOTAL BUDGETED FUNDS</b>				<b>\$1,060,000.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				
Local Agency Share of Participating Costs		\$0.00		
Local Agency Share of Non-Participating Costs		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>				<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>				
a. Federal Funds Budgeted (1a)				\$848,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				<b>\$848,000.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>				
<i>*Note - \$0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.</i>				\$0.00
Net to be encumbered as follows:				\$0.00
WBS Element 17906.10.30	Design	3020		\$0.00
WBS Element 17906.20.10	Const.	3301		\$0.00

## B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds at \$848,000.00 (CFDA #20 2050) to 20.00% Local Agency funds at \$212,000.00, it being understood that such ratio applies only to the \$848,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$848,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$848,000.00, then the amounts of State and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

## C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$848,000.00 (For CDOT accounting purposes, the federal funds of \$848,000.00 and Local Agency matching funds of \$212,000.00 will be encumbered for a total encumbrance of \$1,060,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **\*\*\* Note - \$0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment \*\*\*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

## D. Single Audit Act Amendment

All state and local government and non-profit organization Sub-The Local Agencies receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agencies receiving federal funds are as follows:

### i. Expenditure less than \$500,000

If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

### ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

### iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

If the Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

### iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

**SAMPLE IGA OPTION LETTER**

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below  
 AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
Original Contract CMS #		Option Letter CMS #	
Original Contract SAP #		Option Letter SAP #	

Vendor name: \_\_\_\_\_

**A. SUBJECT:** (Choose applicable options listed below AND in section B and delete the rest)

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

**B. REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

**(Insert the following language for use with Option #1):**

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # of Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (indicate additional dollars here) specified in Paragraph/Section/Provision \_\_\_\_\_ of the original Agreement.

**(Insert the following language for use with Option #2):**

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # of Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to add an overlapping phase in (indicate Fiscal Year here) that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous). Total funds for this Agreement remain the same (indicate total dollars here) as referenced in Paragraph/Section/Provision/Exhibit \_\_\_\_\_ of the original Agreement.

**(Insert the following language for use with Option #3):**

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # of Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (select one: increased and/or decreased) by (insert dollars here) specified in Paragraph/-Section/-Provision/Exhibit \_\_\_\_\_ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when

using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

**(The following language must be included on ALL options):**

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ amount of change) to a new Agreement value of (\$ \_\_\_\_\_) to satisfy services/goods ordered under the Agreement for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision \_\_\_\_\_ is hereby modified accordingly.

The total Agreement value to include all previous amendments, option letters, etc. is (\$ \_\_\_\_\_).

The effective date of this Option Letter is upon approval of the State Controller or delegate.

**APPROVALS:**

**For the The Local Agency:**

Legal Name of the Local Agency

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name of Authorized Individual

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Title: Official Title of Authorized Individual

\_\_\_\_\_

**State of Colorado:**

John W. Hickenlooper, Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director, Colorado Department of Transportation

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.**

**State Controller  
David J. McDermott, CPA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

**32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST****LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b>			
<b>33. LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST</b>			
Project No. BRO M830-055	STIP No. SR46601.013	Project Code 17906	Region 04
Project Location City of Loveland			Date 11/19/2010
Project Description Madison Ave Bridge-Loveland			
Local Agency City of Loveland		Local Agency Project Manager Frank Hempen	
CDOT Resident Engineer Pete Graham		CDOT Project Manager Tim Tuttle	
<b>INSTRUCTIONS:</b>			
<p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>v. TIP / STIP AND LONG-RANGE PLANS</b>			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>vi. PROJECT DEVELOPMENT</b>			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	X
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X
<b>vii.</b>			
<b>viii. PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Pete Graham _____ 11/19/2010 _____ CDOT Resident Engineer(Signature on File) Date		X
6-3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6-4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	A.	X
<b>ix. ADVERTISE, BID AND AWARD</b>			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
<b>x. CONSTRUCTION MANAGEMENT</b>			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	X	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	responsible charge of construction supervision."  <u>Frank Hempen</u> <u>970-962-2515</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction Inspection and documentation	X	
8-6	Approve Shop Drawings	X	
8-7	Perform Traffic Control Inspections	X	X
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates  Provide the name and phone number of the person authorized for this task.  <u>Frank Hempen</u> <u>970-962-2515</u> Local Agency Representative Phone number	X	
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	X	X
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews  Provide the name and phone number of the person responsible for this task.  <u>Pete Graham</u> <u>970-350-2126</u> CDOT Resident Engineer Phone number		X
<b>xi.</b>			
<b>xii. MATERIALS</b>			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products  Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9-8	Approve Mix Designs	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	<ul style="list-style-type: none"> <li>• Concrete</li> <li>• Hot Mix Asphalt</li> </ul>	X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

### xiii. CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE

10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements	X	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	

### xiv.

### xv. FINALS

11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification		
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 17 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

### 33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

### 34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

#### SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part 1E DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

#### SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

#### SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

### 35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

*[Delete this Exhibit if the State is doing the work]*

#### THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and

e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
  - b. Past performance,
  - c. Willingness to meet the time and budget requirement,
  - d. Location,
  - e. Current and projected work load,
  - f. Volume of previously awarded contracts, and
  - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

**36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS**

FHWA-1273 Electronic version -- March 10, 1994

FHWA Form 1273

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

I. General	1
II. Nondiscrimination	3
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VI. Record of Materials, Supplies, and Labor	7
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XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	8
XII. Certification Regarding Use of Contract Funds for Lobbying	9

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this Agreement. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 80-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

**ATTACHMENTS**

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this Agreement, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor

either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Agreement.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this Agreement. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this Agreement or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Agreement. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 278c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 278a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this Agreement.

#### 2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

#### 3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

##### a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to Journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the Journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the Journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

#### b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to Journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the Journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding Journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

#### 5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

#### 6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this Agreement or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### 7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

#### 8. Violation:

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

#### 9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this Agreement.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### VIII. SAFETY; ACCIDENT PREVENTION

1. In the performance of this Agreement the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1928) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1928.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

##### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

#### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this Agreement, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

#### XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

##### 1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\*\*\*\*\*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its Instructions.

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

2. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly

### 37. EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

#### A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

#### B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or sub-the Local Agencies).

#### C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

#### D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and sub-the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

#### E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies and sub-the Local Agencies in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

#### F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

#### G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

**I. Hatch Act**

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

**J. Nondiscrimination**

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

**K. ADA**

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

**L. Uniform Relocation Assistance and Real Property Acquisition Policies Act**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

**M. Drug-Free Workplace Act**

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

**N. Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**O. 23 C.F.R. Part 172**

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

**P. 23 C.F.R Part 633**

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

**Q. 23 C.F.R. Part 635**

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

**R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

**S. Nondiscrimination Provisions:**

**S. Nondiscrimination Provisions:**

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

**i. Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

**Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical

handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**Solicitations for Subcontracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

**Information and Reports**

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

**Sanctions for Noncompliance.**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or b. Cancellation, termination or suspension of the contract, in whole or in part.

**T. Incorporation of Provisions§22**

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

**38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS**  
**State of Colorado**  
**Supplemental Provisions for**  
**Federally Funded Contracts, Grants, and Purchase Orders**  
**Subject to**  
**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**  
**As of 10-15-10**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1. Grants;
- 1.1.2. Contracts;
- 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4. Loans;
- 1.1.5. Loan Guarantees;
- 1.1.6. Subsidies;
- 1.1.7. Insurance;
- 1.1.8. Food commodities;
- 1.1.9. Direct appropriations;
- 1.1.10. Assessed and voluntary contributions; and
- 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

*Award does not include:*

- 1.1.12. Technical assistance, which provides services in lieu of money;
- 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14. Any award classified for security purposes; or
- 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

- 1.2. **"Central Contractor Registration (CCR)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.bpn.gov/ccr>.
- 1.3. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
- 1.4. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 1.5. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
- 1.6. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;
  - 1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;
  - 1.6.2. A foreign public entity;

- 1.6.3. A domestic or foreign non-profit organization;
  - 1.6.4. A domestic or foreign for-profit organization; and
  - 1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.7. **"Executive"** means an officer, managing partner or any other employee in a management position.
  - 1.8. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.
  - 1.9. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."
  - 1.10. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.
  - 1.11. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.
  - 1.12. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.
  - 1.13. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's Central Contractor Registration (CCR) profile, if applicable.
  - 1.14. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
  - 1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:
    - 1.15.1. Salary and bonus;
    - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
    - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
    - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
    - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
    - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
  - 1.16. **"Transparency Act"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
  - 1.17 **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any

revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

**3. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**

**3.1. CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.

**3.2. DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

**4. Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:

**4.1.** The total Federal funding authorized to date under the Award is \$25,000 or more; and

**4.2.** In the preceding fiscal year, Contractor received:

**4.2.1.** 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

**4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

**4.3.** The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

**5. Reporting.** Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.

**6. Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

**7. Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

**39. 7.1.1** Subrecipient DUNS Number;

**40. 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

**41. 7.1.3** Subrecipient Parent DUNS Number;

- 42. 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 43. 7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 44. 7.2.1 Subrecipient's DUNS Number as registered in CCR.
- 45. 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

- 46. 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 47. 8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4 There are no Transparency Act reporting requirements for Vendors.

**9. Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.





**CITY OF LOVELAND**  
**ECONOMIC DEVELOPMENT OFFICE**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 9  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Mike Scholl, Economic Development Department  
**PRESENTER:** Mike Scholl

**TITLE:**

A resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Brownfields Revolving Loan Fund, acting by and through the Colorado Housing and Finance Authority, for a grant to partially fund the removal of environmental hazards located at 301 and 319 N. Lincoln

**RECOMMENDED CITY COUNCIL ACTION:** Adopt the action as recommended

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

This is an administrative action. The resolution would approve an Intergovernmental Agreement (IGA) with the Colorado Brownfields Revolving Loan Fund so that the City can receive \$313,000 in grant funds for the environmental cleanup of 301 and 319 N. Lincoln Avenue. There are two sub-grant agreements because \$213,000 are federal funds from the American Recovery and Reinvestment Act of 2009 (ARRA) and \$100,000 are from the federal Brownfields Initiative.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The City will be eligible to receive \$313,000 in grant funds for the environmental cleanup of the 301 and 319 N. Lincoln Avenue.

**SUMMARY:**

The City Council appropriated the EPA grant funds on September 6, 2011. The appropriation, totaling \$555,800, was for the purchase, remediation and demolition of the site. The IGA covers a portion of the funds appropriated. See below:

Sources	Amount
City/Acquisition	\$55,800
City/Remediation	\$187,000
<b>EPA Grant/Remediation</b>	<b>\$313,000</b>
<b>TOTAL</b>	<b>\$555,800</b>

IGA →

In 2012, the City was awarded the \$313,000 cleanup grant through the Environmental Protection Agency (EPA). The grant was approved to carry out a Voluntary Cleanup (VCUP) plan approved by the Colorado Department of Public Health and Environment (CDPHE). The federal funds are being administered by the Colorado Brownfields Revolving Loan Fund.

The Council has previously appropriated these funds, and approved the acceptance of the grant funds. The IGA approval completes the actions needed.

The remediation and demolition will begin once the IGA is approved by City Council.

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**REVIEWED BY CITY MANAGER:** *William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. Colorado Brownfields Revolving Loan Fund/Subgrant Agreement (“ARRA”)
2. Colorado Brownfields Revolving Loan Fund/Subgrant Agreement (“Non-ARRA”)

**RESOLUTION #R-58-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO BROWNFIELDS REVOLVING LOAN FUND, ACTING BY AND THROUGH THE COLORADO HOUSING AND FINANCE AUTHORITY, FOR A GRANT TO PARTIALLY FUND THE REMOVAL OF ENVIRONMENTAL HAZARDS LOCATED AT 301 AND 319 N. LINCOLN**

**WHEREAS**, the State of Colorado (“State”) received a grant (“Grant”) from the United States Environmental Protection Agency (“EPA”) under and pursuant to the “Brownfields Initiative” under the Comprehensive Environmental Response, Compensation and Responsibilities Act of 1980, as amended (“CERCLA”), a portion of the funds for which originate from the American Recovery and Reinvestment Act of 2009 (“ARRA”), and a portion of the funds for which originate from other sources; and; and

**WHEREAS**, the State, acting through the Colorado Department of Public Health and Environment (“CDPHE”), as the “Lead Agency” under the Grant, the City and County of Denver and the cities of Englewood, Lakewood, Loveland, Commerce City and Westminster, the County of El Paso and the Colorado Housing and Finance Authority (“Authority”), have entered into a Memorandum of Agreement creating the Colorado Brownfields Revolving Loan Fund (“Fund”); and

**WHEREAS**, the State has contracted with the Authority to act as the State’s fiscal agent to receive and administer the proceeds of the Grant on behalf of the Fund; and

**WHEREAS**, the City is the owner of certain real property located at 301 N. Lincoln Avenue (formerly operated as Leslie the Cleaner), and 319 N. Lincoln Avenue (together, the “Property”); and

**WHEREAS**, the City has agreed to undertake and complete the removal of environmental hazards located on the Property (“Project”); and

**WHEREAS**, the City desires to receive, and the State has agreed to provide, the Grant to finance a portion of the Project; and

**WHEREAS**, as governmental entities in Colorado, the City and the State are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the “Colorado Brownfields Revolving Loan Fund Subgrant Agreement” (ARRA Funds), attached hereto as Exhibit A and incorporated herein by reference (“ARRA Grant Agreement”), is hereby approved.

**Section 1.** That the “Colorado Brownfields Revolving Loan Fund Subgrant Agreement” (Non-ARRA Funds), attached hereto as Exhibit B and incorporated herein by reference (“Non-ARRA Grant Agreement”), is hereby approved. Together, the ARRA Grant Agreement and Non-ARRA Grant Agreement are referred to herein as the “Grant Agreements.”

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Grant Agreements in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Grant Agreements on behalf of the City.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21<sup>st</sup> day of August, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

Brownfields Subgrant No. 0005002329«

## COLORADO BROWNFIELDS REVOLVING LOAN FUND

### SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT ("Agreement") is made and dated as of \_\_\_\_\_, 2012, by and between the Colorado Brownfields Revolving Loan Fund (the "Subgrantor"), acting by and through the Colorado Housing and Finance Authority (the "Authority"), and City of Loveland, a political subdivision of the State of Colorado, 500 East Third St., Loveland, CO 80537, (the "Subgrantee").

### RECITALS

WHEREAS, the State of Colorado (the "Grantor") has received a grant (the "Grant") from the United States Environmental Protection Agency ("EPA") under and pursuant to the "Brownfields Initiative" under the Comprehensive Environmental Response, Compensation and Responsibilities Act of 1980, as amended ("CERCLA"), which grant funds originate from the American Recovery and Reinvestment Act of 2009 ("ARRA"); and

WHEREAS, the Grantor, acting through the Colorado Department of Public Health and Environment ("CDPHE") as the "Lead Agency" under the Grant, the City and County of Denver and the cities of Englewood, Lakewood, Loveland, Commerce City and Westminster, the County of El Paso and the Authority have entered into a Memorandum of Agreement (the "MOA") creating the Colorado Brownfields Revolving Loan Fund; and

WHEREAS, the Grantor has contracted with the Authority to act as the Grantor's fiscal agent to receive and administer the Grant on behalf of the Colorado Brownfields Revolving Loan Fund; and

WHEREAS, Subgrantee is the owner of certain real property known as The Leslie the Cleaner Site and located in the County of Larimer, Colorado, at 301 N. Lincoln Ave., Loveland, CO 80537 (the "Property"); and

WHEREAS, Subgrantee has agreed to undertake and complete the removal of environmental hazards located on the Property (the "Project") in accordance with the terms and conditions of the Project Plans (hereinafter defined), and the applicable provisions of federal and state law, including CERCLA (42 USCA 9601 et. seq.) and regulations contained in 40 CFR Part 300; and ARRA; and

WHEREAS, Subgrantee wishes to receive and Grantor has agreed to grant funds to finance a portion of the Project as set forth in the Project Budget approved as part of the Project Plans.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Subgrantee and Grantor agree as follows:

1. Subgrant and Purpose. Subgrantor agrees to grant and Subgrantee agrees to receive an amount equal to the lesser of (a) Two Hundred Thirteen Thousand and No/100 Dollars (\$213,000.00) and (b) eighty percent (80%) of the reimbursable costs of the Project expended by the Subgrantee pursuant to the approved Project Budget, as certified to Subgrantor as provided herein (the "Subgrant") for the Project. The Subgrant will be disbursed to the Subgrantee subject to all of the terms, provisions,

conditions, covenants and agreements contained in this Agreement. The Subgrant is evidenced by a Notice of Award of even date herewith (the "Notice"). This Agreement, the Notice and any other document evidencing or executed in connection with the Subgrant are hereinafter collectively referred to as the "Subgrant Documents."

2. Conditions Precedent to Funding Subgrant. Prior to the advance of any Subgrant proceeds to Subgrantee, all of the following conditions shall have been satisfied, which satisfaction shall be determined by the Grantor in its sole discretion:

(a) The conditions established by Grantor for the funding of the Subgrant shall be satisfied, including the Subgrantee's satisfactory compliance with the terms and conditions of this Agreement.

(b) The CDPHE, acting in the capacities of Site Manager and On-Scene Coordinator with respect to the Project, shall have approved (i) the Voluntary Clean-up Plan (the "V-CUP") for the Project and (ii) the Scope of Work, Project Budget, Work Schedule and, if applicable, Quality Assurance Project Plan submitted by the Subgrantee (collectively, the "Project Plans") which are incorporated into this Agreement by this reference.

(c) Subgrantee shall have furnished to Subgrantor evidence of the insurance coverages required by subparagraph (f) of Section 4 hereof.

(d) Subgrantee shall have delivered to the CDPHE all necessary licenses, authorizations, consents, approvals and permits issued by the appropriate governmental authority required for work on or evidencing or relating to the completion of the Project and placement in service of the Property.

(e) Subgrantee shall be in compliance with all applicable provisions of state and federal law pertaining to the Project, including CERCLA and the regulations contained in 40 CFR Part 300, 42 USCA 9601 et. seq.

(f) Subgrantee shall provide evidence satisfactory to EPA that all laborers and mechanics employed in the Project were paid at rates not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on work of a similar character in the locality in which the work was performed, as determined by the Secretary of Labor with respect to this Project, all as required by CERCLA and the Davis Bacon Act.

(g) The CDPHE shall have been furnished a completed report concerning the Subgrantee's providing minority and women owned businesses the opportunity to participate in the work on the Project using the form attached as Attachment 2 hereto which is incorporated herein.

3. Disbursement of Subgrant Proceeds. The proceeds of the Subgrant shall be disbursed by the Subgrantor, through multiple payment requests in accordance with the following:

(a) Subgrantee shall have provided to the CDPHE a request for payment of proceeds (each a "Draw Request") which includes a certification of the costs of the Project actually expended by Subgrantee pursuant to the approved Project Budget executed by Subgrantee, together with copies of invoices or other acceptable evidence of Subgrantee's payment thereof. The proceeds of the Subgrant shall in no event exceed eighty percent (80%) of the total amount expended by Subgrantee pursuant to the approved Project Budget outlined in the sub-grantee's application. The reimbursable costs of the Project

shall not include any ineligible items identified in Attachment 1 hereto which are incorporated herein. Each subsequent Draw Request shall also include evidence of the Subgrantee's payment of the Project costs covered by the prior Draw Request. Within 15 days of the final draw request, Subgrantee shall provide evidence of payment of the costs covered by the final Draw Request.

(b) The CDPHE shall have been furnished with a certification of the Subgrantee's Licensed Environmental Professional ("LEP") that the amount to be disbursed is consistent with the work performed and that such work has been completed in accordance with the Project Plans.

(c) The CDPHE shall have inspected the work in place and determined that all work completed to the date of the request for an advance (i) has been performed in accordance with the Project Plans; the applicable provisions of state and federal law, including CERCLA and regulations contained in 40 CFR Part 300 ("NCP"), 40 CFR Part 31, 40 CFR Part 35, Subpart 0 and the applicable cross-cutting requirements generally described in the BCRLF Administrative Manual (EPA Publication 500-B-98-001), Section IX; and in a good and workmanlike manner and (ii) is of a value reasonably determined by CDPHE to be not less than the amount theretofore disbursed, plus the amount requested.

(d) Prior to the final disbursement the subgrant proceeds, the CDPHE shall have received and approved the Certificate of Completion by the Subgrantee's Licensed Environmental Professional ("LEP") and the Construction Completion Report developed by Subgrantee's LEP in accordance with Section 300.165 of the NCP and applicable EPA guidance.

4. Agreements of Subgrantee. Subgrantee covenants and agrees with Grantor as follows:

(a) Subgrantee shall use funds only for eligible activities and comply with all applicable provisions of state and federal law, including CERCLA 104(k), in its operation of the Property and shall ensure that the cleanup protects public health and the environment.

(b) Subgrantee shall expend subgrant proceeds solely for costs identified in the approved Project Budget and for no other purpose.

(c) Subgrantee shall correct any defect in the work or any deviation in the work completed from the Project Plans not approved by the CDPHE. The advance of any proceeds of the subgrant shall not constitute a waiver by the Subgrantor of its right to require the Subgrantee's compliance with the Project Plans in completing the Project.

(d) Subgrantee shall maintain financial records pertaining to all matters relative to this Agreement and the Project in accordance with generally accepted accounting principles and procedures and shall retain all of its records and supporting documentation applicable to the Project for a period of not less than ten (10) years following completion of the Project and until it shall have obtained the written authorization of the CDPHE to destroy or discard such records and documentation. All such records and supporting documents shall be made available, upon request, for inspection or audit by the Grantor, the CDPHE or their respective representatives.

(e) Subgrantee shall not discriminate against any person on the basis of race, color, religion, sex, national origin, handicap, age, or veteran status, sexual preference, or any other basis prohibited by law in the lease, use and occupancy of the Project or in connection with the employment or application for employment of any person performing any work pursuant to this Agreement or related to the performance and management of the Project. Subgrantee shall comply with Executive Order 11246, Equal Employment Opportunity, and the regulations at 41 CFR 60-4.

(f) Subgrantee shall maintain and keep in force general liability insurance with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate coverage; and coverage for pollution incidents that may be evidenced by pollution legal liability insurance. Insurance shall be placed with an insurer with an AM. Best's rating of no less than A:VII. Grantor and Colorado Housing and Finance Authority shall be named as "Mortgagee and Loss Payee" with respect to the casualty insurance and as "Additional Insured" with respect to the liability insurance. Subgrantee shall deliver to Grantor from time to time at Grantor's request certificates of insurance or policies evidencing all such insurance then in effect. Policies shall be endorsed to provide that the Grantor shall be provided with thirty (30) days written notice of any cancellation, suspension or reduction in limits.

(g) Subgrantee shall not assign or attempt to assign, directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of Grantor. The Subgrantee shall not convey, assign all or any portion of the Property prior to completion of the Project without the prior written consent of the Grantor.

(h) Subgrantee agrees to not use any subgrant funds for any of the ineligible uses identified in Attachment 1.

(i) Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

(j) Subgrantee shall maintain all the necessary governmental licenses, authorizations, consents, approvals and permits required in connection with the completion of the Project and the operation of the Property fully in effect at all times during its work on the Project

5. Representations and Warranties of Subgrantee. Subgrantee represents and warrants to the Grantor as follows:

(a) All the necessary governmental licenses, authorizations, consents, approvals and permits required in connection with the completion of the Project and the operation of the Property have been obtained and are currently fully in effect.

(b) As of the date of commencement of the Project and as of the date hereof, Subgrantee is not an owner or operator of the site pursuant to CERCLA; or, if the Subgrantee is an owner or operator of the site pursuant to CERCLA, it acquired the Property after the time of disposal or placement of the hazardous substances and the CDPHE has determined (i) that Subgrantee did not cause, contribute to or exacerbate the release of such substances; (ii) Subgrantee falls under a CERCLA statutory exemption from liability; or (iii) Subgrantee has acknowledged and agreed that EPA is fully entitled to use its enforcement discretion under CERCLA as described in EPA Guidance Appendix F.

(c) There is no default on the part of Subgrantee under any agreement or document pertaining to the Project to which it is a party and no event has occurred that with notice or the passage of time or both would constitute a default under any such document.

(d) Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property.

(e) The Property and the proposed use thereof comply with all applicable zoning, environmental protection, use and building codes, laws, regulations and ordinances. Subgrantee has no knowledge of any violations of any laws, ordinances, codes, requirements, orders or covenants of any governmental entity, agency, instrumentality or association having jurisdiction over the Property.

(f) Subgrantee has full power to enter into and perform its obligations under this Agreement and the Subgrant Documents. The execution and delivery of this Agreement and the Subgrant Documents and the performance and observance of their terms, conditions and obligations have been duly authorized by all necessary action on the part of Subgrantee. This Agreement and the Subgrant Documents constitute, and any other agreement required hereby will constitute, when executed and delivered by the Subgrantee to the Grantor, valid and binding obligations of the Subgrantee enforceable in accordance with their terms.

(g) Subgrantee is a political subdivision formed under the laws of the State of Colorado and is validly organized, existing and in good standing under said laws and is duly qualified to do business under the laws of the State of Colorado.

6. Events of Default. The occurrence of any one or more of the following events or existence of one or more of the following conditions, with respect to the Subgrantee, shall constitute an Event of Default under this Agreement:

(a) Subgrantee shall fail to perform any term, covenant or condition to be performed hereunder and such failure is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure such failure, from and after written notice from Grantor to Subgrantee, specifying said failure.

(b) Any representation or warranty made in writing to Grantor or the CDPHE herein or in connection with the making of the Subgrant, or any certificate, statement or report made pursuant to this Agreement by Subgrantee shall prove at any time to have been incorrect in any material respect when made.

(c) This Agreement or any Subgrant Document shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Subgrantee, or Subgrantee shall deny that it has any or further liability or obligation hereunder or thereunder.

7. Remedies.

(a) Upon the occurrence of an Event of Default, Grantor may recover the amount of the Subgrant from Subgrantee and pursue all other rights and remedies provided by law or in equity.

(b) No delay or failure of Grantor in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of the right by Grantor and no exercise or partial exercise or waiver of any right or remedy shall be deemed a waiver of any further exercise of such right or remedy or of any other right or remedy that Grantor may have. The enforcement of any rights of Grantor as to the Subgrant shall not affect the rights of Grantor to enforce repayment of the Subgrant and to recover judgment for any portion thereof remaining unpaid. The rights and remedies herein expressed are cumulative and not exclusive of any right or remedy that the Grantor shall otherwise have.

8. Rights of the Grantor. Grantor may assign, negotiate, pledge or otherwise hypothecate this Agreement and the other documents executed by Subgrantee in connection therewith or any of its rights and security hereunder or thereunder, in whole or in part. In case of such assignment, Subgrantee will accord full recognition thereto and hereby agrees that all rights and remedies of the Grantor in connection with the interests so assigned shall be enforceable against Subgrantee by the assignee thereof.

9. Miscellaneous Provisions.

(a) Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally and may only be modified or amended by an instrument in writing, signed by the parties hereto.

(b) Inspections and approval of the Project and the workmanship and materials used therein impose no responsibility or liability of any nature or kind whatsoever on Grantor or the CDPHE to Subgrantee and/or any third parties. The parties hereby expressly agree and acknowledge that their relationship is that of Grantor and Subgrantee and that no other relationship, including that of joint venture, partnership or other common enterprise is created by this Agreement or the other Subgrant Documents.

(c) All rights, powers, and remedies herein given to Grantor are cumulative and not alternative, and are in addition to all other statutes or rules of law. Any forbearance or delay by Grantor in exercising the same shall not be deemed to be a waiver thereof and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Grantor. All representations, warranties and covenants by Subgrantee shall survive the making of the advances of the Subgrant and the provisions hereof shall be binding upon Subgrantee, its successors and assigns and inure to the benefit of the Grantor, its successors and assigns.

(d) All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed to the parties at the addresses set forth below. Such addresses may be changed by notice to the other party given in the same manner.

(e) This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the Subgrant is outstanding and unpaid.

(f) If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provisions and, to this end, the provisions of this Agreement are hereby declared severable.

(g) This Agreement and all matters of performance relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado or, to the extent applicable, CERCLA and EPA Regulations.

(h) This Agreement may be executed in several counterparts.

10. Additional American Recovery and Reinvestment Act Provisions.

(a) This award is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget (OMB), including the Updated Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on April 3, 2009 and available on [www.recovery.gov](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

(b) The Subgrantee shall comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OM6 Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions recipients of subgrants.

(c) The Subgrantee must comply with Davis-Bacon Act: prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon Act requirements see the Davis Bacon administrative T&C.

(d) The Subgrantee agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

(e) The Subgrantee shall comply with all Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

COLORADO BROWNFIELDS REVOLVING  
LOAN FUND acting by and through the  
COLORADO HOUSING AND FINANCE  
AUTHORITY

1981 Blake Street  
Denver, Colorado 80202

By: \_\_\_\_\_  
Cris White, Executive Director/CEO

SUBGRANTEE:

THE CITY OF LOVELAND, a political subdivision  
of the State of Colorado

500 East Third St.  
Loveland, CO 80537

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

## Attachment 1

Ineligible Uses of Funds

- (1) Subgrantee shall not be used these funds for any of the following activities:
  - a. To fund particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - b. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
  - c. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
  - d. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;
  - e. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
  - f. To pay for a penalty or fine.
  - g. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
  - h. To pay for a response cost at a brownfields site for which the Subgrantee is potentially liable under CERCLA Section 107.
  - i. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
  - j. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
- (2) Under CERCLA 104(k)(4)(8), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the Subgrantee.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the Uniform *Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

- b. Ineligible subgrant administration costs include direct costs for:
  - i. Preparation of applications for Brownfields grants and subgrants;
  - ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
  - iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
  - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
  - v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
  - vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
  - vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
  - viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.
  - ix. Subgrantee is subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements.
- c. Prohibited administrative costs for the Subgrantee (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for subgrant administration and overhead costs.
- d. Direct costs for subgrant administration are ineligible. Ineligible subgrant administration costs include expenses for:
  - i. Preparation of applications for subgrant and loan agreements;
  - ii. Preparing revisions and changes in the budget, work plans, and other documents required under this subgrant agreement;
  - iii. Maintaining and operating financial management and personnel systems;
  - iv. Preparing payment requests and handling payments; and
  - v. Audits.
- e. Overhead costs by the Subgrantee that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in subgrants include expenses for:

- i. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
- ii. Facility costs such as depreciation, utilities, and rent on the Subgrantee's administrative offices; and
- iii. Supplies and equipment not used directly for cleanup at the site.
- iv. Costs incurred by the Subgrantee for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
- xi. Direct costs by the Subgrantee for progress reporting to the Authority are eligible programmatic costs.

**STATE OF COLORADO  
MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE  
AGREEMENTS AND INTERAGENCY AGREEMENTS**

PART 1. (Reports are required even if no procurements are made during the reporting period.)

Contract Number _____			1 B. REPORTING QUARTER (Check appropriate box) <input type="checkbox"/> 1st (Oct-Dec) <input type="checkbox"/> 2nd (Jan-Mar) <input type="checkbox"/> 3 <sup>rd</sup> (Apr-Jun) <input type="checkbox"/> 4th (Jul-Sep) <input type="checkbox"/> Annual			
		Site Name: _____			3A. REPORTING RECIPIENT ) (Name and address)	
5A. TOTAL CONTRACT AMOUNT  \$ _____		5B. Check and skip to Block No.7 if no procurements and accomplishments were made this reporting period.			5C. TOTAL PROCUREMENT AMOUNT THIS REPORTING PERIOD (ONLY include the amount not in any prior reporting period and procurements made by SRF Loan Recipients and Sub Recipients) \$ _____	
6. Contractor Name/Address/Town or City/zip Code/Telephone Number:				MBE	WBE	Date of Award
						AMOUNT
						Type of Service
Signature: _____				TITLE: _____		
		7. If no MBE/WBE used, explain the six steps of efforts used.				

Brownfields Subgrant No. 0005002310

## COLORADO BROWNFIELDS REVOLVING LOAN FUND

### SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT ("Agreement") is made and dated as of \_\_\_\_\_, 2012, by and between the Colorado Brownfields Revolving Loan Fund (the "Subgrantor"), acting by and through the Colorado Housing and Finance Authority (the "Authority"), and City of Loveland, a political subdivision of the State of Colorado, 500 East Third St., Loveland, CO 80537, (the "Subgrantee").

### RECITALS

WHEREAS, the State of Colorado (the "Grantor") has received a grant (the "Grant") from the United States Environmental Protection Agency ("EPA") under and pursuant to the "Brownfields Initiative" under the Comprehensive Environmental Response, Compensation and Responsibilities Act of 1980, as amended ("CERCLA"); and

WHEREAS, the Grantor, acting through the Colorado Department of Public Health and Environment ("CDPHE") as the "Lead Agency" under the Grant, the City and County of Denver and the cities of Englewood, Lakewood, Loveland, Commerce City and Westminster, the County of El Paso and the Authority have entered into a Memorandum of Agreement creating the Colorado Brownfields Revolving Loan Fund; and

WHEREAS, the Grantor has contracted with the Authority to act as the Grantor's fiscal agent to receive and administer the proceeds of the Grant on behalf of the Subgrantor; and

WHEREAS, Subgrantee is the owner of certain real property known as The Leslie the Cleaner Site and located in the County of Larimer, Colorado, at 301 N. Lincoln Ave., Loveland, CO 80537 (the "Property"); and

WHEREAS, Subgrantee has agreed to undertake and complete the removal of environmental hazards located on the Property (the "Project") in accordance with the terms and conditions of the Project Plans (hereinafter defined), and the applicable provisions of federal and state law, including CERCLA (42 USCA 9601 et. seq.) and regulations contained in 40 CFR Part 300; and

WHEREAS, Subgrantee wishes to receive and Subgrantor has agreed to grant funds to finance a portion of the Project as set forth in the Project Budget approved as part of the Project Plans.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Subgrantee and Subgrantor agree as follows:

1. Subgrant and Purpose. Subgrantor agrees to grant and Subgrantee agrees to receive an amount equal to the lesser of (a) One Hundred Thousand and No/00 Dollars (\$100,000.00) and (b) eighty percent (80%) of the reimbursable costs of the Project expended by the Subgrantee pursuant to the approved Project Budget, as certified to Subgrantor as provided herein (the "Subgrant") for the Project. The Subgrant will be disbursed to the Subgrantee subject to all of the terms, provisions, conditions, covenants and agreements contained in this Agreement. The Subgrant is evidenced by a Notice of Award

of even date herewith (the "Notice"). This Agreement, the Notice and any other document evidencing or executed in connection with the Subgrant are hereinafter collectively referred to as the "Subgrant Documents."

2. Conditions Precedent to Funding Subgrant. Prior to the advance of any Subgrant proceeds to Subgrantee, all of the following conditions shall have been satisfied, which satisfaction shall be determined by the Subgrantor in its sole discretion:

(a) The conditions established by Subgrantor for the funding of the Subgrant shall be satisfied, including the Subgrantee's satisfactory compliance with the terms and conditions of this Agreement.

(b) The CDPHE, acting in the capacities of Site Manager and On-Scene Coordinator with respect to the Project, shall have approved (i) the Voluntary Clean-up Plan (the "V-CUP") for the Project and (ii) the Scope of Work, Project Budget, Work Schedule and, if applicable, Quality Assurance Project Plan submitted by the Subgrantee (collectively, the "Project Plans") which are incorporated into this Agreement by this reference.

(c) Subgrantee shall have furnished to Subgrantor evidence of the insurance coverages required by subparagraph (f) of Section 4 hereof.

(d) Subgrantee shall have delivered to the CDPHE all necessary licenses, authorizations, consents, approvals and permits issued by the appropriate governmental authority required for work on or evidencing or relating to the completion of the Project.

(e) Subgrantee shall be in compliance with all applicable provisions of state and federal law pertaining to the Project, including CERCLA and the regulations contained in 40 CFR Part 300, 42 USCA 9601 et. seq.

(f) Subgrantee shall provide evidence satisfactory to EPA that all laborers and mechanics employed in the Project will be paid at rates not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on work of a similar character in the locality in which the work was performed, as determined by the Secretary of Labor with respect to this Project, all as required by CERCLA and the Davis Bacon Act.

(g) The CDPHE shall have been furnished a completed report concerning the Subgrantee's providing minority and women owned businesses the opportunity to participate in the work on the Project using the form attached as Attachment 2 hereto which is incorporated herein.

3. Disbursement of Subgrant Proceeds. The proceeds of the Subgrant shall be disbursed by the Subgrantor, through multiple payment requests in accordance with the following:

(a) Subgrantee shall have provided to the CDPHE a request for payment of proceeds (each a "Draw Request") which includes a certification of the costs of the Project actually expended by Subgrantee pursuant to the approved Project Budget executed by Subgrantee, together with copies of invoices or other acceptable evidence of Subgrantee's payment thereof. The proceeds of the Subgrant shall in no event exceed eighty percent (80%) of the total amount expended by Subgrantee pursuant to the approved Project Budget outlined in the sub-grantee's application. The reimbursable costs of the Project shall not include any ineligible items identified in Attachment 1 hereto which are incorporated herein. Each subsequent Draw Request shall also include evidence of the Subgrantee's payment of the Project

costs covered by the prior Draw Request. Within 15 days of the final draw request, Subgrantee shall provide evidence of payment of the costs covered by the final Draw Request.

(b) The CDPHE shall have been furnished with a certification of the Subgrantee's Licensed Environmental Professional ("LEP") that the amount to be disbursed is consistent with the work performed and that such work has been completed in accordance with the Project Plans.

(c) The CDPHE shall have inspected the work in place and determined that all work completed to the date of the request for an advance (i) has been performed in accordance with the Project Plans; the applicable provisions of state and federal law, including CERCLA and regulations contained in 40 CFR Part 300 ("NCP"), 40 CFR Part 31, 40 CFR Part 35, Subpart 0 and the applicable cross-cutting requirements generally described in the BCRLF Administrative Manual (EPA Publication 500-B-98-001), Section IX; and in a good and workmanlike manner and (ii) is of a value reasonably determined by CDPHE to be not less than the amount theretofore disbursed, plus the amount requested.

(d) Prior to the final disbursement the subgrant proceeds, the CDPHE shall have received and approved the Certificate of Completion by the Subgrantee's Licensed Environmental Professional ("LEP") and the Construction Completion Report developed by Subgrantee's LEP in accordance with Section 300.165 of the NCP and applicable EPA guidance.

4. Agreements of Subgrantee. Subgrantee covenants and agrees with Subgrantor as follows:

(a) Subgrantee shall use funds only for eligible activities and comply with all applicable provisions of state and federal law, including CERCLA 104(k), in its operation of the Property and shall ensure that the cleanup protects public health and the environment.

(b) Subgrantee shall expend subgrant proceeds solely for costs identified in the approved Project Budget and for no other purpose.

(c) Subgrantee shall correct any defect in the work or any deviation in the work completed from the Project Plans not approved by the CDPHE. The advance of any proceeds of the subgrant shall not constitute a waiver by the Subgrantor of its right to require the Subgrantee's compliance with the Project Plans in completing the Project.

(d) Subgrantee shall maintain financial records pertaining to all matters relative to this Agreement and the Project in accordance with generally accepted accounting principles and procedures and shall retain all of its records and supporting documentation applicable to the Project for a period of not less than ten (10) years following completion of the Project and until it shall have obtained the written authorization of the CDPHE to destroy or discard such records and documentation. All such records and supporting documents shall be made available, upon request, for inspection or audit by the Subgrantor, the CDPHE or their respective representatives.

(e) Subgrantee shall not discriminate against any person on the basis of race, color, religion, sex, national origin, handicap, age, or veteran status, sexual preference, or any other basis prohibited by law in the lease, use and occupancy of the Project or in connection with the employment or application for employment of any person performing any work pursuant to this Agreement or related to the performance and management of the Project. Subgrantee shall comply with Executive Order 11246, Equal Employment Opportunity, and the regulations at 41 CFR 60-4.

(f) Subgrantee shall require its contractors on the Project to maintain and keep in force general liability insurance with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate

coverage. Subgrantor and Colorado Housing and Finance Authority shall be named as "Additional Insured" with respect to the liability insurance maintained by the Subgrantee's contractors. Subgrantee shall deliver to Subgrantor from time to time at Subgrantor's request certificates of insurance or policies evidencing all such insurance then in effect. Policies shall be endorsed to provide that the Subgrantor shall be provided with thirty (30) days written notice of any cancellation, suspension or reduction in limits.

(g) Subgrantee shall not assign or attempt to assign, directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of Subgrantor. The Subgrantee shall not convey, assign all or any portion of the Property prior to completion of the Project without the prior written consent of the Subgrantor.

(h) Subgrantee agrees to not use any subgrant funds for any of the ineligible uses identified in Attachment 1.

(i) Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

(j) Subgrantee shall maintain all the necessary governmental licenses, authorizations, consents, approvals and permits required in connection with the completion of the Project and the operation of the Property fully in effect at all times during its work on the Project

5. Representations and Warranties of Subgrantee. Subgrantee represents and warrants to the Subgrantor as follows:

(a) All the necessary licenses, authorizations, consents, approvals and permits required in connection with the completion of the Project and the operation of the Property have been obtained and are currently fully in effect.

(b) As of the date of commencement of the Project and as of the date hereof, Subgrantee is not an owner or operator of the site pursuant to CERCLA; or, if the Subgrantee is an owner or operator of the site pursuant to CERCLA, it acquired the Property after the time of disposal or placement of the hazardous substances and the CDPHE has determined (i) that Subgrantee did not cause, contribute to or exacerbate the release of such substances; (ii) Subgrantee falls under a CERCLA statutory exemption from liability; or (iii) Subgrantee has acknowledged and agreed that EPA is fully entitled to use its enforcement discretion under CERCLA as described in EPA Guidance Appendix F.

(c) There is no default on the part of Subgrantee under any agreement or document pertaining to the Project to which it is a party and no event has occurred that with notice or the passage of time or both would constitute a default under any such document.

(d) Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property.

(e) The Property and the proposed use thereof comply with all applicable zoning, environmental protection, use and building codes, laws, regulations and ordinances. Subgrantee has no knowledge of any violations of any laws, ordinances, codes, requirements, orders or covenants of any governmental entity, agency, instrumentality or association having jurisdiction over the Property.

(f) Subgrantee has full power to enter into and perform its obligations under this Agreement and the Subgrant Documents. The execution and delivery of this Agreement and the Subgrant Documents and the performance and observance of their terms, conditions and obligations have been duly authorized by all necessary action on the part of Subgrantee. This Agreement and the Subgrant Documents constitute, and any other agreement required hereby will constitute, when executed and delivered by the Subgrantee to the Subgrantor, valid and binding obligations of the Subgrantee enforceable in accordance with their terms.

6. Events of Default. The occurrence of any one or more of the following events or existence of one or more of the following conditions, with respect to the Subgrantee, shall constitute an Event of Default under this Agreement:

(a) Subgrantee shall fail to perform any term, covenant or condition to be performed hereunder and such failure is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure such failure, from and after written notice from Subgrantor to Subgrantee, specifying said failure.

(b) Any representation or warranty made in writing to Subgrantor or the CDPHE herein or in connection with the making of the Subgrant, or any certificate, statement or report made pursuant to this Agreement by Subgrantee shall prove at any time to have been incorrect in any material respect when made.

(c) This Agreement or any Subgrant Document shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Subgrantee, or Subgrantee shall deny that it has any or further liability or obligation hereunder or thereunder.

7. Remedies.

(a) Upon the occurrence of an Event of Default, Subgrantor may recover the amount of the Subgrant from Subgrantee and pursue all other rights and remedies provided by law or in equity.

(b) No delay or failure of Subgrantor in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of the right by Subgrantor and no exercise or partial exercise or waiver of any right or remedy shall be deemed a waiver of any further exercise of such right or remedy or of any other right or remedy that Subgrantor may have. The enforcement of any rights of Subgrantor as to the Subgrant shall not affect the rights of Subgrantor to enforce repayment of the Subgrant and to recover judgment for any portion thereof remaining unpaid. The rights and remedies herein expressed are cumulative and not exclusive of any right or remedy that the Subgrantor shall otherwise have.

8. Rights of the Subgrantor. Subgrantor may assign, negotiate, pledge or otherwise hypothecate this Agreement and the other documents executed by Subgrantee in connection therewith or any of its rights and security hereunder or thereunder, in whole or in part. In case of such assignment, Subgrantee will accord full recognition thereto and hereby agrees that all rights and remedies of the Subgrantor in connection with the interests so assigned shall be enforceable against Subgrantee by the assignee thereof.

9. Miscellaneous Provisions.

(a) This Agreement contains the entire agreement between the parties and supersedes all prior discussions, understandings and agreements whatsoever. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally and may only be modified or amended by an instrument in writing, signed by the parties hereto.

(b) Inspections and approval of the Project and the workmanship and materials used therein impose no responsibility or liability of any nature or kind whatsoever on Subgrantor or the CDPHE to Subgrantee and/or any third parties. The parties hereby expressly agree and acknowledge that their relationship is that of Subgrantor and Subgrantee and that no other relationship, including that of joint venture, partnership or other common enterprise is created by this Agreement or the other Subgrant Documents.

(c) All rights, powers, and remedies herein given to Subgrantor are cumulative and not alternative, and are in addition to all other statutes or rules of law. Any forbearance or delay by Subgrantor in exercising the same shall not be deemed to be a waiver thereof and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Subgrantor. All representations, warranties and covenants by Subgrantee shall survive the making of the advances of the Subgrant and the provisions hereof shall be binding upon Subgrantee, its successors and assigns and inure to the benefit of the Subgrantor, its successors and assigns.

(d) All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed to the parties at the addresses set forth below. Such addresses may be changed by notice to the other party given in the same manner.

(e) This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the Subgrant is outstanding and unpaid.

(f) If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provisions and, to this end, the provisions of this Agreement are hereby declared severable.

(g) This Agreement and all matters of performance relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado or, to the extent applicable, CERCLA and EPA Regulations.

(h) This Agreement may be executed in several counterparts.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SUBGRANTOR:

COLORADO BROWNFIELDS REVOLVING  
LOAN FUND acting by and through the  
COLORADO HOUSING AND FINANCE  
AUTHORITY

By: \_\_\_\_\_  
Cris White, Executive Director/CEO

1981 Blake Street  
Denver, Colorado 80202

SUBGRANTEE:

THE CITY OF LOVELAND, a political subdivision  
of the State of Colorado

500 East Third St.  
Loveland, CO 80537

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

## Attachment 1

Ineligible Uses of Funds

- (1) Subgrantee shall not be used these funds for any of the following activities:
  - a. To fund particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - b. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
  - c. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
  - d. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;
  - e. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
  - f. To pay for a penalty or fine.
  - g. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
  - h. To pay for a response cost at a brownfields site for which the Subgrantee is potentially liable under CERCLA Section 107.
  - i. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
  - j. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
- (2) Under CERCLA 104(k)(4)(8), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the Subgrantee.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the Uniform *Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

- b. Ineligible subgrant administration costs include direct costs for:
  - i. Preparation of applications for Brownfields grants and subgrants;
  - ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
  - iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
  - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
  - v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
  - vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
  - vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
  - viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.
  - ix. Subgrantee is subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements.
- c. Prohibited administrative costs for the Subgrantee (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for subgrant administration and overhead costs.
- d. Direct costs for subgrant administration are ineligible. Ineligible subgrant administration costs include expenses for:
  - i. Preparation of applications for subgrant and loan agreements;
  - ii. Preparing revisions and changes in the budget, work plans, and other documents required under this subgrant agreement;
  - iii. Maintaining and operating financial management and personnel systems;
  - iv. Preparing payment requests and handling payments; and
  - v. Audits.
- e. Overhead costs by the Subgrantee that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in subgrants include expenses for:

- i. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
- ii. Facility costs such as depreciation, utilities, and rent on the Subgrantee's administrative offices; and
- iii. Supplies and equipment not used directly for cleanup at the site.
- iv. Costs incurred by the Subgrantee for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
- xi. Direct costs by the Subgrantee for progress reporting to the Authority are eligible programmatic costs.

**STATE OF COLORADO  
MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE  
AGREEMENTS AND INTERAGENCY AGREEMENTS**

PART 1. (Reports are required even if no procurements are made during the reporting period.)

Contract Number _____			1 B. REPORTING QUARTER (Check appropriate box) <input type="checkbox"/> 1st (Oct-Dec) <input type="checkbox"/> 2nd (Jan-Mar) <input type="checkbox"/> 3rd (Apr-Jun) <input type="checkbox"/> 4th (Jul-Sep) <input type="checkbox"/> Annual			
		Site Name: _____			3A. REPORTING RECIPIENT ) (Name and address)	
5A. TOTAL CONTRACT AMOUNT  \$ _____		5B. Check and skip to Block No.7 if no procurements and accomplishments were made this reporting period.			5C. TOTAL PROCUREMENT AMOUNT THIS REPORTING PERIOD (ONLY include the amount not in any prior reporting period and procurements made by SRF Loan Recipients and Sub Recipients) \$ _____	
6. Contractor Name/Address/Town or City/zip Code/Telephone Number:				MBE	WBE	Date of Award
				AMOUNT	Type of Service	
Signature:				TITLE:		
		7. If no MBE/WBE used, explain the six steps of efforts used.				



**CITY OF LOVELAND**  
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 10  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** John Duval, City Attorney  
**PRESENTER:** John Duval

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**TITLE:**

A resolution approving an Intergovernmental Agreement between the City of Loveland and Platte River Power Authority for the exchange of legal services

**RECOMMENDED CITY COUNCIL ACTION:**

Adoption of the Resolution

**OPTIONS:**

1. Adopt the action as recommended
  2. Deny the action
  3. Adopt a modified action (specify in the motion)
  4. Refer back to staff for further development and consideration
  5. Adopt a motion continuing the item to a future Council meeting
- 

**DESCRIPTION:**

This is an administrative action to approve an intergovernmental agreement that will authorize the sharing of legal services between the City of Loveland and Platte River Power Authority (PRPA) when conflicts arise that prevent the City Attorney's Office or PRPA legal counsel from representing the interests of their clients.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible
- 

**SUMMARY:**

The City of Loveland and PRPA would like to share legal services between the City Attorney's Office and PRPA legal counsel when conflicts arise that prevent the City Attorney's Office or PRPA legal counsel from representing their respective governmental bodies in certain legal matters. The City and PRPA believe that sharing of legal services rather than employing outside counsel will be efficient and cost effective for both Parties. The City has similar

intergovernmental agreements for the exchange of legal services with the City of Fort Collins and the City of Greeley.

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**REVIEWED BY CITY MANAGER:** *William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Resolution

**RESOLUTION # R-59-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF LOVELAND AND PLATTE RIVER POWER  
AUTHORITY FOR THE EXCHANGE OF LEGAL SERVICES**

**WHEREAS**, the City of Loveland (“City”) and Platte River Power Authority (“PRPA”), collectively referred to herein as the “Parties” are political subdivisions of the State of Colorado duly organized and existing in accordance with Colorado law; and

**WHEREAS**, Section 29-1-203 of the Colorado Revised Statutes authorizes intergovernmental agreements between and among political subdivisions of the State of Colorado to cooperate or contract with one another to provide functions, services or facilities lawfully authorized to each; and

**WHEREAS**, the City Attorney’s Office and PRPA legal counsel on occasion have conflicts that prevent them from representing their respective governmental bodies in certain legal matters; and

**WHEREAS**, the Parties may employ outside counsel to represent them in cases of conflict; and

**WHEREAS**, the Parties believe that sharing of legal services between each other when such conflicts arise will be efficient and cost effective for both Parties; and

**WHEREAS**, the City Council finds that it is in the best interest of its citizens to enter into and participate in the Intergovernmental Agreement for Exchange of Legal Services attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”).

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF LOVELAND, COLORADO AS FOLLOWS:**

**Section 1.** That the Agreement among the Parties attached hereto and incorporated herein as Exhibit A, is hereby approved.

**Section 2.** That the City Manager is hereby authorized and directed to enter into the Agreement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

**Section 3.** That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED 21<sup>st</sup> day of August, 2012.

\_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

A Resolution Approving an Intergovernmental Agreement between the City of Loveland and Platte River Power Authority for the Exchange of Legal Services

**Exhibit A**  
**INTERGOVERNMENTAL AGREEMENT FOR EXCHANGE OF LEGAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado ("Platte River") and THE CITY OF LOVELAND, COLORADO, a home rule municipality ("Loveland"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, pursuant to Section 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the legal interests of the Parties are generally represented by the attorneys employed thereby; and

WHEREAS, on occasion, the attorneys for each of the Parties are prevented from representing the interests of their client by reason of personal conflicts of interest or other situations which may impair their ability to fully represent the interests of their client in particular cases; and

WHEREAS, the Parties are authorized to employ the services of special legal counsel in such situations; and

WHEREAS, in certain such instances, the most efficient and cost effective manner of providing for the legal representation of the Parties would be to exchange the services of members of the respective legal staffs of the Parties; and

WHEREAS, the Loveland City Council and the Platte River Board of Directors have determined that it would be in the best interests of the Parties to enter into an Intergovernmental Agreement to authorize the exchange of such legal services under appropriate circumstance and to establish the terms and conditions upon which such exchange of services should occur.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

(1) Exchange of Legal Services. If the Loveland City Attorney or the Platte River General Counsel determines, in his or her discretion, that a conflict of interest or other situation exists which prevents him/her from performing the normal duties of his/her office, said attorney ("the Requesting Attorney") shall determine whether the subject matter of the representation would be appropriate for an exchange of legal services under this Agreement. In making such determination, the Requesting Attorney shall consider the nature and complexity of the matter at issue; the amount of time which may be required to satisfactorily resolve the matter, either through litigation or otherwise; the level of special expertise, if any, which may be

required to competently represent the interests of his or her client(s); and any other factors which the Requesting Attorney may consider to be relevant. Upon a determination that an exchange of legal services would be appropriate under this Agreement, the Requesting Attorney shall so notify the attorney for the other party to this Agreement ("the Responding Attorney") and request the provision of such legal services.

Upon receipt of any such request, the Responding Attorney shall determine whether such services may be provided by his/her office without unduly interfering with the Responding Attorney's ability to perform the normal duties of his/her own office. The Responding Attorney shall notify the Requesting Attorney within five (5) working days as to whether the request for legal services can be accommodated. If so, the Responding Attorney may assign any one (1) or more attorneys in the Responding Attorney's office to provide such services.

(2) Reimbursement of Costs. The party for whom legal services are rendered under this Agreement ("the Requesting Party") shall reimburse the other party ("the Responding Party") for all out-of-pocket expenses incurred in rendering the requested legal services. Such expenses shall include, without limitation, cost of reproducing documents, mileage, long distance telephone calls, deposition costs and expert witness fees, but shall exclude any reimbursement for compensation paid by the Responding Party to its attorney or his/her support staff. Payment of such expenses shall be made within thirty (30) days of the date of receipt of any billing therefore.

(3) Employment Status. Throughout the delivery of the requested legal services, the Responding Attorney shall represent the interests of the Requesting Party but shall continue to be employed solely by the Responding Party, and the delivery of such legal services for the Requesting Party shall be considered to be within the scope of the performance of the Responding Attorney's duties for and employment by the Responding Party.

(4) Indemnification. To the extent permitted by law, the Requesting Party shall indemnify and hold harmless the Responding Party, its directors, officers, employees and agents, including without limitation the Responding Attorney, from and against all liabilities, claims and demands which may arise from the negligent acts or omissions of the Responding Attorney or any of his or her subordinates, agents or other persons acting under his or her authority. In addition, the Requesting Party shall indemnify the Responding Party for all costs and expenses related to defending such liabilities, claims and demands, including, without limitation, litigation costs and attorneys' fees, whether or not such liabilities, claims or demands are groundless, frivolous, false or fraudulent. However, the Parties agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities or limitations to liability that the Requesting Party may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) and to any other defenses, immunities or limitations to liability available to the Requesting Party under the law.

(5) Term. The term of this Agreement shall continue for a period of one (1) year from the date hereof and shall be automatically renewed for successive one (1) year periods unless terminated by either party. Either party may terminate this Agreement at the close of any one (1) year period by the giving of written notice of termination to the other party not less than thirty (30) days prior to the close of the one (1) year period then in effect.

(6) Assignment. This Agreement shall not be assigned by either of the Parties. Any assignment of this Agreement by either of the Parties shall be deemed null and void.

(7) Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the Parties acknowledge that there are legal constraints imposed upon Platte River and Loveland by the constitutions, statutes, rules and regulations of the State of Colorado and of the United States, and imposed upon Loveland by its Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

PLATTE RIVER POWER AUTHORITY

By: \_\_\_\_\_  
Brian Moeck, General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel

THE CITY OF LOVELAND, COLORADO

By: \_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

## City Council Regular Meeting

August 7, 2012

**CALL TO ORDER**

Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

**PLEDGE OF ALLEGIANCE****ROLL CALL**

Roll was called and the following responded: Gutierrez, Farley, Klassen, Trenary, Fogle, McKean, and Taylor. Councilor Shaffer was absent.

**PROCEDURAL INFORMATION**

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

**CONSENT AGENDA**

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor Klassen moved to approve the Consent Agenda. The motion was seconded by Councilor McKean and a roll call vote was taken with all councilors present voting in favor thereof.

**1. CITY CLERK****Approval of Council Minutes****Motion**

Administrative Action: The minutes from the July 10, 2012 study session and the July 17, 2012 regular meeting were approved.

**2. CITY MANAGER****Appointments to the Boards & Commissions****Motion**

Administrative Action:

A motion appointing John Stuart to the Volunteer Firefighters' Pension Board of Trustees for a term effective until June 30, 2016 was approved.

A motion reappointing John Suess and appointing Chris Kanowitz to the Disabilities Advisory Commission, each for a term effective until June 30, 2015 was approved.

A motion reappointing Jacquie Elliott and appointing Melody Bettenhausen and Tim Hitchcock to the Human Services Commission, each for a term effective until June 30, 2015 and appointing Audra Montoya as an Alternate member of the Human Services Commission for a one year term effective until June 30, 2013 was approved.

A motion to appoint Louise Lucke to the Library Board for a partial term effective until December 31, 2013 was approved.

A motion to appoint Bruce Croissant to the Transportation Advisory Board for a partial term effective until June 30, 2013 was approved.

### 3. DEVELOPMENT SERVICES

#### **Rezone Property – HP/Agilent Open Space**

**Ordinance #5697**

Quasi-judicial Action: "An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the amended plat of: the amended plat of CMS Addition and the Fourth South Industrial Addition, Tract 1 Fourth South Industrial Addition; the amended plat of Tracts 1 and 2 Block 1, Loveland Technological Center First Subdivision, Tract 2, Block 1; the Big Thompson Industrial Park Second Subdivision, Lot 2, Block 1; the Big Thompson Industrial Park, Tract 3 and Tract 4; the Fairgrounds First Subdivision, Outlot A; the Hewlett-Packard Roosevelt Addition, Tract A; the Hewlett-Packard Big Thompson First Subdivision, Tracts 1 and 2; the Loveland Technological Center First Subdivision, Tract 3; the Second South Industrial Addition, Tract 1; the Third South Industrial Addition, Tract 2, City of Loveland, County of Larimer, State of Colorado" was approved and ordered published on second reading.

### 4. DEVELOPMENT SERVICES

#### **Designation of Ray House/Hauseman House as Historic Landmark**

**Ordinance #5698**

Legislative Action: "AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE RAY HOUSE/HAUSEMAN HOUSE LOCATED AT 524 NORTH HARRISON AVENUE IN LOVELAND, COLORADO" was approved and ordered published on second reading.

### 5. DEVELOPMENT SERVICES

#### **Drainage and Utility Easement Vacation – Alford Lakes First Subdivision**

**1<sup>st</sup> Rdg Ord & P.H.**

Legislative Action: A public hearing was held and "AN ORDINANCE VACATING A PORTION OF A DRAINAGE AND UTILITY EASEMENT ON LOT 39, BLOCK 1, ALFORD LAKES FIRST SUBDIVISION, CITY OF LOVELAND" was approved and ordered published on first reading.

### 6. DEVELOPMENT SERVICES

#### **Nomination of Milner-Schwarz House for National Register of Historic Places**

**Resolution #R-52-2012**

Administrative Action: Resolution #R-52-2012 authorizing the City Manager to sign an application nominating the Milner-Schwarz House to the National Register of Historic Places was approved.

#### RESOLUTION #R-52-2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN APPLICATION NOMINATING THE MILNER-SCHWARZ HOUSE TO THE NATIONAL REGISTER OF HISTORIC PLACES

WHEREAS, the City of Loveland owns the Milner-Schwarz House located at 700 S. Railroad Avenue, Loveland, CO 80537; and

WHEREAS, in 2009, the Milner-Schwarz House was designated as a historic landmark and included in Loveland Historic Landmark Register, pursuant to Chapter 15.56 of the Loveland Municipal Code; and

WHEREAS, the City has partnered with the Loveland Historic Society to complete stabilization and exterior renovation of the House and the City and Society would like to have the option to allow people to enter and use the interior of the House in the future; and

## City Council Regular Meeting

August 7, 2012

WHEREAS, the Milner-Schwarz House is located in the Big Thompson flood plain and federal floodplain regulations do not allow it to be entered or occupied. If the property is listed on the National Register of Historic Places, it could be exempted from these regulations and its interior spaces could be opened up to the public, if desired; and

WHEREAS, at its regularly scheduled meeting on July 16, 2012, the Historic Preservation Commission adopted a motion recommending that the City Council authorize preparation and signature of an application nominating the Milner-Schwarz House to the National Register of Historic Places.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That preparation of an application nominating the Milner-Schwarz House to the National Register of Historic Places (the "Nomination Application") is hereby authorized.

Section 2. That the City Manager is hereby authorized to approve and execute, on behalf of the City as the owner of the Milner-Schwarz House, the Nomination Application.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 7th day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

## 7. POLICE

### **Award Contract to Motorola for Communication System for Police Department**

#### **Motion**

Administrative Action: A motion awarding a contract to Motorola Solutions, Inc. in the amount of \$889,517 for the purchase of a Motorola MCC7500 dispatch console system and authorizing the City Manager to execute the contract was approved.

## 8. AIRPORT

### **FAA Grant Awards**

#### **Resolution**

Administrative Action: Resolution #R-53-2012 authorizing the City Manager to execute the 2012 grant agreements (Project No. 3-08---23-30 and Project No. 3-08-0023-31) with the Federal Aviation Administration for improvements and equipment acquisitions at the Fort Collins-Loveland Municipal Airport was approved.

#### RESOLUTION # R-53-2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE 2012 GRANT AGREEMENTS (PROJECT NO. 3-08-0023-30 AND PROJECT NO. 3-08-0023-31) WITH THE FEDERAL AVIATION ADMINISTRATION FOR IMPROVEMENTS AND EQUIPMENT ACQUISITIONS AT THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the Cities of Fort Collins and Loveland jointly own and operate the Fort Collins-Loveland Municipal Airport (the "Airport"); and

WHEREAS, the Cities, by resolution, have adopted the Fort Collins-Loveland Municipal Airport Master Plan; and

WHEREAS, the Federal Aviation Administration ("FAA") provides grant funding to eligible airports to enable those airports to pursue, in a timely manner, capital improvements included within an adopted Airport Master Plan; and

WHEREAS, the Cities have applied for and have been offered two FAA capital funding grants that include a \$295,592.00 grant for the purpose of funding the design services for rehabilitating the aircraft parking apron as identified in the proposed Grant Agreement (Project No. 3-08-0023-30), attached hereto as Exhibit A and incorporated herein by this reference, and a \$234,685.00 grant for the purpose of funding the acquisition of snow removal equipment as identified in the proposed Grant Agreement (Project No. 3-08-0023-31), attached here to as Exhibit B and incorporated by this reference (collectively referred to as the "2012 Grant Agreements"); and

WHEREAS, the projects identified in the 2012 Grant Agreement are identified in the Fort Collins-Loveland Municipal Airport Master Plan as a first priority projects; and

WHEREAS, the matching local funds of ten percent (10%) necessary to accept this grant from the Federal Aviation Administration have been previously appropriated as part of the Airport's 2012 budget.

## City Council Regular Meeting

August 7, 2012

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That the 2012 Grant Agreements are hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the 2012 Grant Agreements in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the 2012 Grant Agreements on behalf of the City of Loveland.

Section 4. That this Resolution shall take effect as of the date and time of its

ADOPTED this 7th day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office.

**CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.**

**CITY COUNCIL**

a) Citizens' Reports

Lee Severance, E. 33<sup>rd</sup> Loveland, suggested using citizen volunteers to assist Council by researching issues prior to Council meetings. He also asked for something to be done about the appearance of the building on 4<sup>th</sup> Street across from Thompson Park.

b) Business from Council

Klassen	Councilor Klassen talked about the work of the Northern Colorado Water Conservancy District and the tour he took of the Colorado-Big Thompson Project. He thanked the NCWCD, Eric Wilkinson and Steve Adams for their work.
Trenary	Councilor Trenary congratulated everyone involved with the Gnarly Barley Brewfest at the Larimer County Fair. He attended the Firestone Service Center opening. He enjoyed the Larimer County Fair, especially the hot air balloons. He mentioned the Northern Colorado Technology Transfer Fair recently held in Fort Collins.
Taylor	Councilor Taylor mentioned the Sculpture Shows are this weekend and extended thanks to the Parks and Recreation Department for their work in getting the parks ready.
Fogle	Councilor Fogle congratulated Engaging Loveland for last weekend's balloon rally. On August 18, at the Barnes & Noble in Loveland, the Rotary Club will be hosting "Children's Reader Day". The Rotary Club will be at the Sculpture Show selling "ducks" for the duck race later in the month that raises money for the schools.
Gutierrez	Councilor Gutierrez thanked staff for helping to make the Foote Lagoon concerts so successful. He especially likes the U.S. flag! He also thanked all of the sponsors. He attended a demonstration by the Police & Fire SWAT teams at the firing range. He attended a meeting with the Federal Railroad Administration regarding train noise. The third annual Cajun Boil benefitting the Community Kitchen will be held on September 21, 2012. The Platte River Power Authority Board has selected Jackie Sargent as the new general manager. He also mentioned the auction on Saturday night benefitting the Artist Charitable Fund and thanked Firestone Service Center for getting involved so quickly in supporting the community.

City Council Regular Meeting  
August 7, 2012

- Farley                                      Councilor Farley mentioned the Sculpture in the Park show benefitting the purchase of artwork for Benson Park, the Loveland Invitational Art Show which is the largest outdoor sculpture show in the country and the Art in the Park show. All three shows will take place the weekend of August 11<sup>th</sup> and 12<sup>th</sup>. He also attended an event sponsored by the Community Foundation open to all the non-profits in the area. At this event, the Mayor introduced a movie called "Saving Philanthropy".
- McKean                                      Councilor McKean also took the Colorado-Big Thompson Project tour. He mentioned the low water levels in Grand Lake. He enjoyed the Larimer County Parade and Fair. He mentioned the great turnout at Chick Filet on August 1<sup>st</sup> in support of a local business.
- c) City Manager Report                      None
- d) City Attorney Report                      None

**REGULAR AGENDA**

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

**9. FINANCE**

**June 2012 Financial Report  
Information Only**

Finance Director Brent Worthington introduced this item to Council. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the five months ending June 30, 2012. The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the month ending June 30, 2012. Citywide Revenue (excluding internal transfers) of \$105,640,524 is 103.3% of year to date (YTD) budget or \$3,341,827 over the budget. Sales Tax collections are 102.6% of the YTD budget or \$419,501 over budget. Building Material Use Tax is 133.2% of YTD budget, or \$166,167 over budget. Sales and Use Tax collections combined were 104.8% of YTD budget or \$847,232 over budget. When the combined sales and use tax for the current year are compared to 2011 for the same period last year, they are higher by 7.2% or \$1,249,592. Citywide total expenditures of \$93,236,004 (excluding internal transfers) are 78.1% of the YTD budget or \$26,113,675 under the budget, in large part due to the accrual of salaries back to 2011; lower than expected health, unemployment, and workers compensation claims; and the timing of capital project expenditures.

**10. CITY MANAGER**

**Investment Report for June 2012  
Information Only**

Executive Fiscal Advisor Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2012 is \$2,729,560. Through June 2012, the amount posted to the investment account is \$1,758,377 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$387,749. Based on the June monthly statement, the estimated annualized yield on the U.S. agencies and corporates dropped up to 1.31%, under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

City Council Regular Meeting  
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**11. CITY MANAGER**

**Mid-Year Review of City Council Goals for 2012**

City Manager Bill Cahill introduced this item to Council. The City Council held its Annual Advance on January 21, 2012 at Group Publishing in Loveland. This annual event is intended for the Council to set major goals and priorities for the coming year. As follow-up to the Advance, the Council expressed interest in holding a mid-year review to evaluate progress. This is that review. The consensus of Council was to move forward with Staff's recommendation to defer the 287 Business Corridor Plan to next year (2013) and replace it with the oil and gas item in the 2012 goals and priorities. Councilor Fogle asked, at some point in the future, to have an estimate of staff's time spent on the oil and gas item. Discussion occurred about train noise. Staff mentioned the new Region 6 Administrator has agreed to read the City's 2009 Quiet Zones Study. Staff will follow-up with Region 6.

**ADJOURNMENT**

Having no further business to come before Council, the August 7, 2012 Regular Meeting was adjourned at 8:45 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 12  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**PRESENTER:** Greg George

**TITLE:**

A Statement of Direction describing a general approach for the development of regulations on oil and gas development in the City, a memorandum presenting the results of the City Council questionnaire on oil and gas development, and a memorandum from the City Attorney concerning the regulation of oil and gas activities.

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt a motion approving the Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland (**Attachment A**).

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

City staff is seeking directions from City Council on how to proceed with the development of regulations on oil and gas development in the City. City staff has also provided a memorandum (**Attachment B**) presenting the results of the City Council Questionnaire on Oil and Gas Development. The City Attorney has provided a memorandum (**Attachment C**) analyzing the City of Greeley's oil and gas regulations as compared to the City of Longmont's, some of which are now being challenged in the courts by the Colorado Oil and Gas Conservation Commission. Attached to his memorandum are Greeley's regulations as found in its code at Chapter 18.56 and a copy of the Commission's complaint filed in its lawsuit against the City of Longmont.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

In early July 2012, City staff asked City Council members to complete a questionnaire to identify Council priorities regarding the regulation of oil and gas development within the City. Questionnaires were received from all eight councilors. Since the City's nine-month moratorium on oil and gas development went into effect on May 5, 2012, City staff has been researching the extent to which local municipalities can regulate oil and gas development without those regulations being pre-empted by State law.

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**REVIEWED BY CITY MANAGER:** 

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**LIST OF ATTACHMENTS:**

- A. Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland
- B. Results of City Council Questionnaire
- C. City Attorney's Memorandum Comparing Greeley's Oil and Gas Regulations to Longmont's Regulations Being Challenged in the Courts

## Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland

### Generally

City staff will promptly develop an approach to oil and gas regulation which includes regulation by ordinance, and also incorporates operating agreements to be negotiated with oil and gas companies. Care will be taken in the drafting of the ordinance to ensure critical health and safety concerns and minimize impacts of oil and gas on neighbors, while at the same time providing for access to mineral rights and harmonizing with state law and regulation. The draft ordinance will draw upon the successful experience of other jurisdictions, and avoid conflicts with state law or regulation that would draw legal challenge from the State of Colorado.

### Regulations by Ordinance

**Method:** Oil and gas development shall be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, will be amended to avoid legal preemption based on an operational conflict.

**Standards:** The City staff will explore and develop standards in the draft ordinance to address the following areas:

1. Closed loop/pitless wastewater disposal systems
2. Hazardous materials disclosure
3. Road damage/repair
4. Odor
5. Visual Screening
6. Setbacks (not in excess of those allowable by State law and regulation)
7. Construction traffic and routing
8. Safety and spill prevention
9. Emergency preparedness plan
10. Fire inspections

**Fees:** The draft ordinance shall include the development of a fee structure for permitting to recover City costs of service, to the extent not in conflict with State law and regulation. These will include System Impact Fees as well.

### Use of Operator Agreements

The City will incorporate into its practice the use of individually negotiated agreements with individual oil and gas companies, as recommended by the Colorado Oil and Gas Association. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.

**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**DATE:** August 21, 2012  
**RE:** Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland

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## Results of City Council Questionnaire

### A. INTRODUCTION

This memorandum presents the results of the Council questionnaire on oil and gas development in the City of Loveland and a general approach for developing such regulations based on the results of the survey and research by City staff.

### B. RESULTS OF QUESTIONNAIRE

A copy of the questionnaire is included for reference as *Exhibit A*.

The results of the questionnaire generally provide two types of information. First, an item receiving a high number of votes indicates that Council is interested in pursuing that option. To the contrary, an item receiving a low number of votes, particularly zero, indicates that Council is not interested in pursuing that option. The following presents the discernible results of the questionnaire.

#### 1. How should Loveland approach the regulation of oil and gas operations?

- a. All councilors want the City to adopt some type of regulations to regulate oil and gas development.
- b. The option receiving the majority of votes was to adopt new rules, going as far in the rules as is legally permissible, but clearly avoiding any rules that would draw legal challenges.
- c. The option of adopting stringent new rules which are locally determined, even if it means risking litigation from the state or the industry received no votes.

#### 2. What represents your views on fees to be charged by the City?

- a. The option that City fees should completely recover costs of service received the most votes.
- b. The option that no fees be charged received no votes.

**3. Should the City play a role in inspecting oil and gas operations?**

- a. The results were inconclusive because all three options received the same number of votes.

**4. What areas are you particularly interested in regulating?**

- a. The following areas of regulation received the highest majority of votes:
- i. Closed loop/pitless wastewater disposal systems
  - ii. Hazardous materials disclosure
  - iii. Road damage/repair
- b. The following areas of regulation received the second highest majority of votes:
- i. System impact fee
  - ii. Odor
  - iii. Visual Screening
  - iv. Setback
  - v. Construction traffic and routing
  - vi. Safety and spill prevention
  - vii. Emergency preparedness plan
  - viii. Fire inspections
  - ix. Training and working with local fire personnel
- c. All the other areas for regulation listed in the survey received some votes.

**5. Narrative comments:** The following narrative comments were included in the surveys.

- a. We need to get this done ASAP-we are currently restricting the rights of property owners-this cannot continue!
- b. Use MOUs to get these (i.e. fencing, setbacks etc.) I believe we might be able to write our regs utilizing MOUs to achieve a higher level of cooperative compliance than can be achieved by detailed regs that might be preempted by state standards.
- c. The City should track and review all federal and state legislative initiatives related to oil, gas and other mineral exploration and extraction processes and policies, vigorously advocating for protection of citizens form both public safety and private property investment value perspectives additionally advocating for the sovereignty of home rule and community quality of life. I'm interested in going as far as we can without raising a substantial risk of litigation.
- d. The extent to which we can follow the lead of Greeley—the areas where there is a clear example but also vigorously following the conditions of the approval process. The best path forward in this would seem to me to be a close analysis of the Greeley process and an honest investment in the conditions of the approval process. We must do all we are allowed through the LGD process in a cooperative manner.
- e. There should be a balance between industry's R.O.I. and City's cost recovery. We should enforce things we are by law allowed to enforce. Our local government agent plays a very important role here. As Greeley and the OGC have told us, we can regulate "above the ground" while OGC rules "below the ground." Our challenge is to draw our regulations pertaining to "above the ground" as tight as possible, brushing up, but carefully not exceeding, state OGC regs. We must not be perceived as attempting to prohibit by regulation. In this regard, we would be foolish to not benefit from the vast experience of our Greeley friends. Simply stated, we should regulate, within reason, what we are allowed by law to regulate, and avoid attempts of citizens desire to prohibit.

### C. GENERAL APPROACH FOR DEVELOPMENT OF REGULATIONS

1. **Questionnaire:** The results of the questionnaire provide valuable direction from City Council on the desire to adopt regulations that go as far as legally permissible to protect the health, safety and welfare of Loveland citizens, while clearly avoiding any regulations that would draw legal challenges. The results also give City staff an idea of what areas of regulation are most important to City Council. The narrative comments identify other values and approaches that will be taken into account by City staff.
2. **Minimum Standards:** The general approach recommended by City staff is to explore a wide range of regulations considered necessary to protect the health, safety and welfare of Loveland citizens, but avoiding those regulations that would likely be preempted by State law. The resulting areas for regulation would be presented to City Council as minimum supplemental standards applicable to all applications for oil and gas development.
3. **Operators Agreements:** The Colorado Oil and Gas Association strongly recommends that local municipalities negotiate with individual oil and gas companies to develop operator agreements. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.
4. **Special Review:** City staff is recommending that oil and gas development be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, would have to be amended to avoid legal preemption based on an operational conflict.



## The Challenge:

**Problem:** *In recent years, exploration for oil and gas has increased in Larimer County due to the discovery of the resources-rich Niobrara formation in this region and the increase use of horizontal hydraulic fracturing and directional drilling. These factors make it more likely that oil and gas drilling may occur within, or adjacent to, Loveland city limit. The oil and gas industry is regulated by the State Oil and Gas Conservation Commission.*

*The potential for oil and gas drilling to occur in close proximity to, or within, residential neighborhoods has resulted in an increase in citizen concerns. Citizens have requested that City Council explore the extent to which the City could adopt regulations on the oil and gas industry to mitigate impacts on public health, safety and welfare. State law prohibits a local municipality from enforcing regulations that would materially impede or destroy the interest of the state or federal government (“operational conflict”). Currently, there is no clear rule that establishes what sorts of regulations would or would not create an operational conflict and, therefore, be pre-empted by the State. Courts have described operational conflict as an ad-hoc, case-by-case determination. Much depends upon the degree to which the local regulation can be seen as supplementing and supporting, rather than replacing or attempting to displace, the state regulation.*

**Challenge:** *To develop regulations on the oil and gas industry necessary to protect the health, safety and welfare of Loveland citizens that would not likely be preempted by state law.*

## Instructions:

This questionnaire will assist in preparing for an upcoming Study Session. Once completed, the information will be compiled and presented in combined form for an effective discussion with Council.

Please complete each of the questions as directed below. They include both numerical prioritizations and open ended comments. We encourage you to write comments to enhance our understanding of your responses or add information that was not available as a selection. If additional space is needed, please use the back of a page or add pages when you return the survey. You do not need to include your name. ***Please return this survey to Rochelle Fernley by Friday, July 13, 2012, in the envelope provided.***

## Colorado Open Records Act:

Your completed questionnaire arguably constitutes “work product”, which is not subject to public inspection under the Colorado Open Records Act (“CORA”). However, please keep in mind that it is always possible that a court could decide otherwise under a CORA records request. Once again, you are not required to put your name on your questionnaire.



1. Which of the following most closely resembles your general view on how Loveland should approach the regulation of oil and gas operations:

- Take no action, leaving our existing regulation in place (recognizing they might not comply with current law).
- Repeal our existing rules, but adopt no local regulations, instead relying on COGCC regulations alone.
- Repeal our existing rules and adopt new rules by patterning them after Greeley's rules, perhaps with a couple of minor changes.
- Repeal our existing rules and adopt new rules by thorough review of other cities; but be guided primarily by advice from COGCC as to what COGCC thinks is proper.
- Repeal our existing rules and adopt new rules by thorough review of other cities; go as far in the rules as is legally permissible but clearly avoid any rules that would draw legal challenges.
- Repeal our existing rules and adopt stringent new rules which are locally determined, even if it means risking litigation from the state or the industry.

2. If the City issues permits, fees would probably be charged. What represents your views on fees?

- There should be no fees charged.
- Fees should completely recover costs of service.
- Fees should recover some costs, but be within the industry's ability to pay.

3. Should the City play a role in inspecting oil and gas operations?

- We should do fire/safety inspections only.



We should do general inspections, but no enforcement. Our inspections should be informational to the operators and the COGCC.

We should do general inspections and enforce with the operators.

4. What areas you are particularly interested in the City regulating?

Use by special review

Building permit

Fees and charges

System impact fee (i.e. sewer, water)

Capital expansion fees (i.e. streets, fire protection, Law enforcement, general government)

Stormwater investment fee

Financial security

Aesthetics and neighborhood impacts

Noise

Light and glare

Odor

Dust

Security fencing

Visual screening

Setbacks

Construction traffic and routing



Environmental and health effects

- Secondary containment facilities
- Closed loop/pitless wastewater disposal systems
- Air quality monitoring
- Water quality monitoring
- Safety and spill prevention
- Temporary erosion control
- Stormwater drainage
- Wildlife and habitat
- Site re-vegetation
- Weed control

Road damage/repair

Fire safety

- Emergency preparedness plan
- Fire inspections
- Hazardous materials disclosure
- Training and working with local fire personnel

Signs

Please add any other comments you may have. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THANK YOU!



## Office of the City Attorney

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[www.cityofloveland.org](http://www.cityofloveland.org)

### Memorandum

TO: Mayor and City Council

FROM: John Duval, City Attorney 

RE: Comparison of Greeley's Oil and Gas Regulations to Longmont's Regulations Being Challenged in the Courts

DATE: August 14, 2012

#### I. INTRODUCTION

At Council's August 7 meeting, there were some questions asked and a discussion concerning City staff's next steps in developing an ordinance to regulate oil and gas activities within the City. Staff advised Council that at its upcoming August 21 meeting there would be this agenda item summarizing for Council the results of a survey taken of councilmembers' preferences concerning such regulations, together with staff's proposed "Statement of Direction" for Council's consideration.

To help Council in evaluating this Statement of Direction, Councilor McKean asked staff to provide with this agenda item a copy of the City of Greeley's oil and gas regulations as found in its code (the "Greeley Regulations") and a copy of the complaint recently filed by the Colorado Oil and Gas Commission (the "Commission") against the City of Longmont challenging Longmont's recently adopted ordinance enacting oil and gas regulations (the "Longmont Complaint"). The Greeley Regulations and the Longmont Complaint are attached as Attachments 1 and 2, respectively.

Councilor McKean also asked for an analysis as to why the Greeley Regulations have been in effect since 1998 without any legal challenge, while the Commission is now challenging several aspects of Longmont's ordinance in the Longmont Complaint. This analysis follows.

#### II. THE GREELEY REGULATIONS

The Greeley Regulations allow oil and gas activities to occur in all of Greeley's zone districts as a use subject to Greeley's use-by-special-review process. Greeley's special review process is very similar to Loveland's in that both processes apply the general criterion of whether the proposed use is compatible with surrounding land uses and, to the extent not, allow for the imposition of conditions through the special review process to mitigate negative impacts to the surrounding uses. These conditions are usually imposed to mitigate the proposed use's negative impacts related to traffic, noise, aesthetics and protection of the environment. Both cities also impose in their respective codes



a variety of specific requirements, such as detailed standards for parking, landscaping, setbacks and other standards regulating similar aspects of development. Relating to these specific requirements and detailed standards, in 1998 Greeley's city council enacted in Chapter 18.56 of its code a number of specific regulations and standards governing oil and gas activities to be used as part of its special review process.

In its Chapter 18.56, Greeley regulates oil and gas activities in the following eighteen ways:

- Minimum setbacks for oil and gas facilities;
- Oil and gas activities in floodplains;
- Disposal of wastes from oil and gas exploration and production;
- Seismic exploration for oil and gas;
- Signage;
- Access roads to oil and gas facilities;
- Noise;
- Visual impacts;
- Safety impacts;
- Wildlife impacts;
- Reclamation of oil and gas sites;
- Abandonment and plugging of oil and gas wells;
- Fencing of oil and gas facilities;
- Elimination of fire hazards;
- Adequate blowout preventers;
- Monumenting of plugged and abandoned oil and gas wells;
- Building permits as required by Greeley's building and fire codes; and
- City inspections.

Arguably, some of these areas of regulation, such as the minimum setbacks, are in operational conflict with the Commission's regulations and, as a result, are preempted by state law. This brings us, therefore, to Councilor McKean's question as to why the Greeley Regulations have not been challenged in the courts since their enactment in 1998.

To answer this question fully would require more thorough research and investigation than I have done to prepare this memorandum. Such research and investigation would most importantly include a discussion with the oil and gas companies currently operating in Greeley and with Greeley's staff to see why they think there have been no legal challenges. It is likely that the manner in which Greeley staff has administered, interpreted and enforced the Greeley Regulations has been as big a factor as the wording of the Greeley Regulations themselves. Stated differently, even if the letter of the law in the Greeley Regulations is arguably preempted by state law, oil and gas operators in Greeley have apparently been happy with and accepted the way in which Greeley city staff has administered, interpreted and enforced the Greeley Regulations.

This said, in several regulatory areas the Greeley Regulations have either essentially adopted the Commission's regulations or expressly provided that the Greeley Regulations will be deemed superseded by the Commission's regulations to the extent that there is a conflict between them.

Greeley has clearly done this to reduce the likelihood of a legal challenge to the Greeley Regulations. There are six regulatory areas where this is the case in the Greeley Regulations, and they are:

- Minimum setbacks for oil and gas facilities;
- Disposal of oil and gas exploration and production wastes;
- Seismic exploration for oil and gas;
- Signage;
- Reclamation of oil and gas sites; and
- Abandonment and plugging of oil and gas wells, except for some requirements for notice to the Greeley Fire Authority before abandonment and plugging operations begin.

The remaining twelve areas addressed in the Greeley Regulations are not limited in their application by similar references to the Commission's regulations, and they are:

- Oil and gas activities in floodplains;
- Access roads to oil and gas facilities;
- Noise;
- Visual impacts;
- Safety impacts;
- Wildlife impacts;
- Fencing of oil and gas facilities;
- Elimination of fire hazards;
- Adequate blowout preventers;
- Monumenting of plugged and abandoned oil and gas wells;
- Building restrictions as required by Greeley's building and fire codes; and
- City inspections.

You will see in the following analysis of the Longmont Complaint, that a few of these remaining twelve areas are challenged in the Longmont Complaint by the Commission as being preempted by state law.

### **III. THE LONGMONT COMPLAINT**

This past July 17, Longmont's city council adopted an ordinance to regulate oil and gas activities in Longmont. In the Longmont Complaint, filed in Boulder District Court on July 30, the Commission challenges as being preempted by state law the following eight aspects of the Longmont ordinance:

- Requirement that oil and gas facilities be consolidated on multi-well sites and that directional and horizontal drilling techniques be used;
- Minimum setback requirements with regard to water bodies, stream corridors, riparian areas, wildlife and wildlife habitats;
- Requirement that oil and gas facilities comply with Longmont's wildlife habitat and species protection code provisions;
- Ban on oil and gas well surface operations and facilities in Longmont's residential zone districts;
- Requirement that oil and gas operators provide full, but confidential, disclosure to the city of all the hazardous materials they transport on any Longmont roadway;

- Visual mitigation conditions imposed on Longmont’s oil and gas well permits to require use of low profile tanks and/or “minor” relocation of facilities to less visible location;
- Requirements that oil and gas operators perform more water sampling than required by the Commission’s regulations and that the operators submit a water quality monitoring plan to the city for its review and approval; and
- Oil and gas operators required to follow city process to adjudicate operational conflicts between the requirements of Longmont’s ordinance and state law.

As you can see, while the Greeley Regulations purport to regulate wildlife and visual impacts, Greeley has not been challenged in these regulatory areas but Longmont now is in the Longmont Complaint. This further suggests that Greeley’s success in administering the Greeley Regulations without a legal challenge may have as much to do with how Greeley has administered, interpreted and enforced the Greeley Regulations than with how they are written.

#### IV. CONCLUSION

Greeley’s apparent strategy in drafting and enforcing the Greeley Regulations so as to avoid operational conflicts with the Commission’s regulations, has obviously been successful in avoiding legal challenges. Longmont, on the other hand, seems to be pursuing a different strategy. Based on my legal research, the challenged Longmont regulations that are least likely to survive are those which, on their face, appear to be in clear operational conflict with the Commission’s regulations. They are: (1) the requirements for consolidated multi-well sites and directional and horizontal drilling; (2) the minimum setbacks from water bodies and wildlife habitats; (3) the ban on oil and gas surface operations and facilities in residential zoning districts; and (4) the requirements for operators to perform more water sampling than required by the Commission’s regulations and for the submittal of a water quality monitoring plan to the city for its review and approval. The legal survivability of the other four regulations challenged in the Longmont Complaint will depend on whether the evidence presented at trial in the lawsuit will support a finding by the court that the regulations can be interpreted and applied in such a way so as to avoid an operational conflict with the Commission’s regulations. If the trial court cannot make this finding for any of these other four regulations, they will also not survive legal challenge.

Please let me know if you have any questions about this memorandum.

JRD/lms  
Attachments

ec: Bill Cahill, City Manager  
Greg George, Development Services Director

## ATTACHMENT 1

**Chapter 18.56****Oil and Gas Operations****18.56.010 Purpose and intent.**

The purpose of this Chapter is to protect and promote the health, safety, morals, convenience, order, prosperity and general welfare of the present and future residents of the City. It is the City's intent by enacting these regulations to facilitate the development of oil and gas resources within the City while mitigating land use conflicts between such development and existing as well as proposed land uses. It is recognized that, under Colorado law, the surface and mineral estates are separate and distinct interests in land and that one (1) may be severed from the other. Owners of oil and gas interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface oil and gas interests, subject to compliance with the provisions of these regulations and any other applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources and particularly in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with these regulations. Local governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction, including use for oil and gas drilling. These regulations are intended as an exercise of this land use authority. Should it be established by competent evidence that a proposed oil or gas facility cannot be operated in compliance with these regulations, land use approval for such a facility may be denied. Such denial may be appealed as provided for in Chapter 18.24, Appeals. (Ord. 27, 1998 §1)

**18.56.020 General provisions.**

(a) The provisions in this Chapter shall apply to all oil and gas exploration and production operations proposed or located on surface property within the City limits.

(b) All oil and gas exploration and production operations shall require use by special review approval as provided in Chapter 18.20 and should be referred to for further information on the use by special review process.

(c) Where provisions in this Chapter are in conflict with other provisions of this Code, the more restrictive, or that provision which results in the higher standard, shall apply.

(d) Exceptions to City provisions of this Chapter may be granted by the Planning Commission as part of the approval of the use by special review only if the owner or operator demonstrates by a preponderance of evidence that the exception or waiver is necessary to prevent waste or protect correlative rights and can provide equivalent mitigation measures for the standards waived. Decisions of the Planning Commission may be appealed to the City Council as provided in Chapter 18.24, Appeals. (Ord. 27, 1998 §1)

#### **18.56.030 Definitions.**

(a) All terms used herein that are defined in the Act or in Oil and Gas Conservation Commission regulations and are not otherwise defined in Subsection (b) below shall be defined as provided in the Act or in such regulations. All other words used herein shall be given their usual customary and accepted meaning unless otherwise provided in this Title, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry.

(b) The words, terms and phrases listed below shall have the following meanings:

*Act* shall mean the Oil and Gas Conservation Act of the State of Colorado.

*Assembly building* shall mean any building or portion of building or structure used for the regular gathering of fifty (50) or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transport.

*Building unit* shall mean a building or structure intended for human occupancy. A dwelling unit, every guest room in a hotel/motel, every five thousand (5,000) square feet of building floor area in commercial facilities and every fifteen thousand (15,000) square feet of building floor area in warehouses or other similar storage facilities is equal to one (1) building unit.

*Commission or OGCC* shall mean the Oil and Gas Conservation Commission of the State of Colorado.

*Day*, for the sole purpose of this Chapter, shall mean a period of twenty-four (24) consecutive hours.

*Director*, for the sole purpose of this Chapter, shall mean Director of the Oil and Gas Conservation Commission of the State of Colorado.

*Educational facility* shall mean any building used for legally allowed educational purposes for more than twelve (12) hours per week for more than six (6) persons. This includes any building or portion of building used for licensed day-care purposes for more than six (6) persons.

*High-density area* shall be determined at the time the well is permitted on a well-by-well basis, by calculating the number of occupied building units within the seventy-two-acre area defined by a one-thousand-foot radius from the wellhead or production facility and shall mean any tract of land which meets one (1) of the following:

a. Thirty-six (36) or more actual or platted building units are within a one-thousand-foot radius, or eighteen (18) or more building units are within any semi-circle of the one-thousand-foot radius, at an average density of one (1) building unit per two (2) acres. If platted building units are used to determine density, then fifty percent (50%) of said platted units shall have building units under construction or constructed;

b. An educational facility, assembly building, hospital, nursing home, board and care facility or jail is located within one thousand (1,000) feet of a wellhead or production facility; or

c. If a designated outside activity area is within one thousand (1,000) feet of a wellhead or production facility, the area may become high density upon application and determination by the OGCC.

*Hospital, nursing home, board and care facilities*, for the sole purpose of this Chapter, shall mean buildings used for the licensed care of more than five (5) in-patients or residents.

*Inspector, City* shall mean any person designated by the City Manager or by the Manager's designee, who shall have the authority to inspect a well site to determine compliance with this Chapter and other applicable ordinances of the City.

*Jail* shall mean those structures where the personal liberties of occupants are restrained, including but not limited to mental hospitals, mental sanitariums, prisons and reformatories.

*Local government designee* shall mean the office designated to receive, on behalf of the local government, copies of all documents required to be filed with the local governmental designee pursuant to the rules of the OGCC.

*Mineral owner* shall mean any person having title or right of ownership in subsurface oil and gas or leasehold interest therein.

*Operating plan* shall mean a general plan which describes an oil and gas exploration and production facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operation, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

*Operator* shall mean the person designated by the owner or lessee of the mineral rights as the operator and so identified in Oil and Gas Conservation Commission applications.

*Production facilities* shall mean all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flow lines and other equipment directly associated with oil wells, gas wells or injection wells.

*Sidetracking* shall mean entering the same wellhead from the surface, but not necessarily following the same well bore, throughout its subsurface extent when deviation from such well bore is necessary to reach the objective depth because of an engineering problem.

*Surface owner* shall mean any person having title or right of ownership in the surface estate of real property or leasehold interest therein.

*Twinning* shall mean the drilling of a well adjacent to or near an existing well when the well cannot be drilled to the objective depth or produced due to an engineering problem, such as a collapsed casing or formation damage.

*Well* shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

*Well site* shall mean the areas which are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well or injection well.

*Wellhead* shall mean the mouth of the well at which oil or gas is produced. (Ord. 27, 1998 §1)

#### **18.56.040 Well and production facility setbacks.**

(a) In all areas of the City, except for flow lines, transmission lines and power supply lines and as provided for in Subsection (b) below, the following shall apply:

(1) All wellheads, production tanks and/or associated on-site production equipment shall be set back at least one hundred fifty (150) feet or one and one-half (1½) times the height of the derrick, whichever is greater, to any public road or private road built to City standards, platted right-of-way, built trail, parking lot, major aboveground utility or rail line.

(2) Low-density areas. At the time of initial drilling of the well, any wellhead or production tanks and/or associated on-site production equipment shall be located not less than one hundred fifty (150) feet from any occupied building.

(3) High-density areas.

a. At the time of initial drilling of the well, the wellhead location shall be not less than two hundred (200) feet from any occupied building, and not less than three hundred fifty (350) feet from any educational facility, assembly

building, hospital, nursing home, board and care facility or jail in those areas which are high-density areas, as defined in Subsection 18.56.030(b) above, or outdoor activity area as designated by the State.

b. At the time of initial installation, production tanks and/or associated on-site production equipment shall be located not less than two hundred (200) feet from any occupied building and not less than five hundred (500) feet from an educational facility, assembly building, hospital, nursing home, board and care facility, jail or State-designated outdoor activity area. Said five-hundred-foot setback shall be decreased to the maximum achievable setback if five hundred (500) feet would extend beyond the area on which the operator has a legal right to place or construct such facilities.

(b) Where compliance with OGCC spacing rules, regulations or orders makes it impossible for the applicant to meet the setbacks stipulated in Subsection (a) above, the applicant may not be required to fully meet the above described setbacks. Approval must first be obtained from the OGCC before the applicant may seek relief from the City. The applicant shall, however, meet the setbacks to the maximum extent possible within the OGCC spacing regulations and may be required to implement special mitigation measures as described herein.

(c) If the OGCC approves a waiver as provided for in Subsection (b) above, the City may attach conditions, provided that such conditions can provide equivalent mitigation measures for the standards waived. (Ord. 04, 2008 §5; Ord. 4, 2006 §1; Ord. 27, 1998 §1)

#### **18.56.050 Flood plain restrictions.**

The well and tank battery shall comply with all applicable federal, state and local laws and regulations when located in a flood way or a one-hundred-year flood plain area.

(1) All equipment at production sites located within a one-hundred-year flood plain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one (1) foot above the level of a one-hundred-year flood.

(2) Any activity or equipment at any well site within a one-hundred-year flood plain shall comply with the Federal Emergency Management Act and shall not endanger the eligibility of residents of the City to obtain federal flood insurance. (Ord. 27, 1998 §1)

#### **18.56.060 Disposal of drilling mud and exploration and production waste.**

All exploration and production waste, including drilling mud or other drilling fluids, shall be stored, handled, transported, treated, recycled or disposed of in accordance with OGCC regulations, to prevent any significant adverse environmental impact on air, water, soil or biological resources. (Ord. 27, 1998 §1)

#### **18.56.070 Seismic operations.**

All persons shall comply with all Commission rules with respect to seismic operations. Seismic operations shall occur within the City only between the hours of 7:00 a.m. and 7:00 p.m. In addition, the owner or operator shall provide a notice of intent to conduct seismic exploration at least seven (7) days prior to commencement of the data recording operations to the Community Development Director and the Fire Chief. Said notice shall include the following:

- (1) Method of exploration;
- (2) Map showing the proposed seismic lines, at a scale at least one-half (½) inch to the mile;
- (3) Name and permanent address of the seismic contractor; and
- (4) The name, address and telephone number of the seismic contractor's local representative. (Ord. 27, 1998 §1)

#### **18.56.080 Signage.**

The well and tank battery owner or operator shall comply with all OGCC rules with respect to signage. In addition, the owner or operator shall maintain all signs in readable condition. Signs shall comply with Chapter 18.54, Signs, and the Uniform Fire Code, as adopted by the City, except when any variations from these codes are required by OGCC regulations. (Ord. 27, 1998 §1)

**18.56.090 Access roads.**

All roads used to access the tank battery and wellhead shall be constructed to accommodate local emergency vehicle access requirements and be maintained in a reasonable condition according to the following standards:

(1) Tank battery access roads. Access roads to tank batteries shall, at a minimum, be:

a. A graded gravel roadway at least twenty (20) feet wide and with a minimum unobstructed overhead clearance of thirteen (13) feet six (6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Public Works Department. The aggregate material, at a minimum, shall meet the requirements for Class 6, Aggregate Base Course as specified in the Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction," latest edition. This standard may be waived by the Public Works Department and the Fire Chief for good cause and if the spirit and intent of this Section are otherwise met.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (i.e., roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval of the Public Works Department.

c. Maintained so as to provide a passable roadway meeting the requirements of Subsection (1)a above at all times.

(2) Wellhead access roads. Access roads to wellheads shall, at a minimum, be:

a. A graded dirt roadway at least twenty (20) feet wide and with a minimum unobstructed overhead clearance of thirteen (13) feet, six (6) inches, compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Public Works Department.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (i.e., roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval of the Public Works Department.

c. Maintained so as to provide a passable roadway meeting the requirements of Subsection (2)a above at all times.

(3) If a well site falls within a high density area at the time of construction, all leasehold roads shall be constructed to accommodate local emergency vehicle access requirements and shall be maintained in a reasonable condition.

(4) All tank battery and wellhead access roads which intersect a paved City street or alley shall be paved to standards determined by the Public Works Director from the existing paved roadway to the edge of the public right-of-way. Such standards shall protect public streets, sidewalks and curb and gutters. No mud or gravel, except minor and nominal amounts, shall be carried onto City streets or sidewalks. If mud or gravel is carried onto City streets or sidewalks, the owner or operator shall ensure that the streets are promptly cleaned. With the permission of the Director of Public Works, the owner or operator may make arrangements for the Public Works Department to clean the streets at the sole cost of the owner or operator.

(5) No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage, the owner and operator, jointly and severally, shall indemnify the City for any reasonable repair costs. (Ord. 27, 1998 §1)

**18.56.100 Compliance with environmental requirements.**

(a) Operators shall conform to all current City, county, state and federal regulations and standards concerning air quality, water quality, odor and noise.

(b) All City sanitation and environmental standards shall be met.

(c) All surface trash, debris, scrap or discarded material connected with the operation of the property shall be removed from the premises or disposed of in a legal manner. (Ord. 27, 1998 §1)

**18.56.110 Environmental impacts and mitigation.**

(a) Noise impacts and mitigation.

(1) State law and regulations concerning noise abatement (Title 25, Article 12, C.R.S.) shall apply to all operations, together with applicable local government ordinances, rules or regulations.

(2) Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from all buildings certified or intended for occupancy, to the extent practicable.

(3) Special mitigation measures.

a. Where a well or tank battery does not comply with the required setback or other portions of this Chapter, or where the well or tank battery is in an area of particular noise sensitivity, such as hospitals, schools and churches, additional noise mitigation may be required. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:

1. Nature and proximity of adjacent development (design, location, type);
2. Prevailing weather patterns, including wind directions;
3. Vegetative cover on or adjacent to the site; and
4. Topography.

b. Based upon the specific site characteristics set forth above, nature of the proposed activity and its proximity to surrounding development and type and intensity of the noise emitted, additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots and/or the level of noise emitted by the well and well site. One (1) or more of the following additional noise abatement measures may be required:

1. Acoustically insulated housing or cover enclosing the motor, engine or compressor, or other noise mitigation techniques;
2. Vegetative screen consisting of trees and shrubs;
3. Solid wall or fence of acoustically insulating material surrounding all or part of the facility;
4. Noise management plan identifying and limiting hours of maximum noise emissions, type, frequency and level of noise to be emitted and proposed mitigation measures;
5. Lowering the level of pumps or tank battery; and
6. Requirements for electric motors only.

(b) Visual impacts and mitigation.

(1) To the maximum extent practical, oil and gas facilities shall be located away from prominent natural features such as distinctive rock and land forms, river crossings and other landmarks.

(2) To the maximum extent practical, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

(3) To the maximum extent practical, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

(4) At all times, the applicant shall minimize the removal of existing vegetation.

(5) To the maximum extent practical, the applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.

(6) The applicant shall replace earth adjacent to water crossings at slopes at an angle which insures stability for the soil type of the site, to minimize erosion.

(7) The applicant shall align access roads to follow existing grades and minimize cuts and fills.

(8) Facilities shall be painted as follows:

- a. Uniform, noncontrasting, nonreflective color tones, similar to Munsell Soil Color Coding System.
- b. Color matched to land, not sky, slightly darker than adjacent landscape.
- c. Exposed concrete colored to match soil color.

(9) Storage tanks and other facilities shall be kept clean and well-painted and otherwise properly maintained, so that signs are legible and all flammable material removed from the site.

(10) Where a well or tank battery does not comply with the required setback or other portions of this Chapter, or in areas of increased visual sensitivity determined by the City, the applicant shall submit a visual mitigation plan which shall include but not be limited to one (1) or more of the following standards:

- a. Exterior lighting shall be directed away from residential areas or shielded from said areas to eliminate glare.
- b. Construction of buildings or other enclosures may be required where facilities create noise and visual impacts which cannot be mitigated because of proximity, density and/or intensity of adjacent residential land use.

(11) One (1) or more of the following landscaping practices may be required, where practical, on a site specific basis:

- a. Establishment and proper maintenance of adequate ground covers, shrubs and trees.
- b. Shaping cuts and fills to appear as natural forms.
- c. Cutting rock areas to create irregular forms.
- d. Designing the facility to utilize natural screens.
- e. Construction of fences or walls, such as woven wood or rock, for use with or instead of landscaping.

(c) Safety impacts and mitigation.

(1) Adequate precautions shall be taken and necessary wellhead safety devices used at all times during the drilling, completion, recompletion, reworking, production, repair and maintenance of the well.

(2) Adequate fire-fighting apparatus and supplies, approved by the Fire Authority or appropriate fire district, shall be maintained on the drilling site at all times during drilling, completion and repair operations. All machinery, equipment and installations on all drilling sites within the City limits shall conform with such requirements as may be issued by the Fire Authority or appropriate fire district.

(3) Any well located less than three hundred fifty (350) feet from an occupied building or in high density areas shall be equipped with blowout preventers during drilling.

(d) Wildlife impacts and mitigation.

(1) When one (1) or more wells or tank batteries are located within sensitive areas as identified on the City's Areas of Ecological Significance Map, the applicant shall consult with the Division of Wildlife and the City to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures.

(2) In lieu of a site specific mitigation review for each well and well site, the applicant may submit to the Community Development Director a multi-site plan addressing cumulative impacts to wildlife from the estimated total number of facilities planned in the same area and including areas within the Long-Range Expected Growth Area, if at least one (1) proposed well site is in the City. (Ord. 27, 1998 §1)

**18.56.120 Recordation of flow lines.**

All flow lines, including transmission and gathering systems, shall have the legal description of the location recorded with the County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be recorded with the County Clerk and Recorder within thirty (30) days after abandonment. (Ord. 27, 1998 §1)

**18.56.130 Reclamation.**

The operator shall comply with all Commission rules with respect to site reclamation. The OGCC Drill Site Reclamation Notice shall be filed with the City at the same time it is sent to the surface owner. (Ord. 27, 1998 §1)

**18.56.140 Abandonment and plugging of wells.**

(a) The operator shall comply with all OGCC rules with respect to abandonment and plugging of wells.

(b) Operators of wells which are to be abandoned upon the completion of drilling and not be put into production shall notify the Fire Authority not less than two (2) hours prior to commencing plugging operations.

(c) Operators of formerly producing wells shall notify the Fire Authority not less than two (2) working days prior to removing production equipment or commencing plugging operations.

(d) The operator shall provide copies of all OGCC plugging and abandonment reports to the City at the same time they are filed with the OGCC. (Ord. 27, 1998 §1)

**18.56.150 Operations in high density areas.**

In addition to setbacks as required in Subsection 18.56.040(a)(2), the following provisions shall apply to high density areas:

(1) At the time of initial installation, if a well site falls within a high density area, all pumps, pits, wellheads and production facilities shall be adequately fenced to restrict access by unauthorized persons. For security purposes, all such facilities and equipment used in the operation of a completed well shall be surrounded by a fence six (6) feet in height, of noncombustible material and which includes a gate which shall be locked.

(2) Any material not in use that might constitute a fire hazard shall be placed a minimum of twenty-five (25) feet from the wellhead, tanks and separator. Within ninety (90) days after a well is plugged and abandoned, the well site shall be cleared of all nonessential equipment.

(3) Adequate blowout prevention equipment shall be provided for drilling operations and well servicing operations.

(4) The operator shall identify the location of plugged and abandoned wells with a permanent monument which shall include the well number and date of plugging inscribed on the monument.

(5) Where possible, operators shall provide for the development of multiple reservoirs by drilling on existing pads or by multiple completions or commingling in existing well bores. (Ord. 27, 1998 §1)

**18.56.160 Building permits.**

Building permits shall be obtained as required by the City's adopted Building and Fire Codes and all other applicable codes and regulations then in effect. (Ord. 27, 1998 §1)

**18.56.170 Requirements and procedures.**

(a) Within all zone districts, it shall be unlawful for any person to drill a well, reactivate a plugged or abandoned well, or perform initial installation of accessory equipment or pumping systems unless a use by special review permit has first been granted by the City in accordance with the procedures in Chapter 18.20 and those prescribed herein. The initial use by special review permit shall allow any twinning, sidetracking, deepening, recompleting or reworking of a well and relocation of accessory equipment or gathering and transmission lines so long as all applicable regulations of this jurisdiction and the State are met. If any twinning, sidetracking, deepening, recompleting or reworking of a well, or relocation of accessory equipment or gathering and transmission lines occurs, then the operator shall submit a revised site plan to the City depicting any changes from the approved special review permit. After review of the revised site plan, the City shall issue a Notice to Proceed as provided in Section 18.56.200.

(b) In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures may be subject to inspections by the City at reasonable times to determine compliance with all applicable regulations, the Uniform Fire Code, as adopted by the City, the Uniform Building Code, as adopted by the City and other applicable City ordinances and regulations. (Ord. 27, 1998 §1)

**18.56.180 Site plan application requirements.**

(a) An application for a use by special review pursuant to this Chapter and Chapter 18.20 shall be filed with the Community Development Department and shall include the following information:

(1) City application form and applicable fee.

(2) Copies of all information submitted to the OGCC. In addition, the following information, if not provided in the materials submitted to the OGCC, shall be provided to the City on one (1) or more plats or maps, drawn to scale, showing the following information:

a. The proposed location of production site facilities or well site facilities associated with the well in the event production is established, if applicable. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within five hundred (500) feet of the well site shall be shown.

b. The location of layout, including, without limitation, the position of the drilling equipment and related facilities and structures, if applicable.

c. True north arrow, scale and plan legend.

d. The following information within a radius of five hundred (500) feet of the proposed well:

1. Existing surface improvements;

2. Existing utility easements and other rights-of-way of record, if any; and

3. Existing irrigation or drainage ditches, if any.

e. The applicant's drainage and erosion control plans for the well site or production site and the area immediately adjacent to such site, if applicable.

f. Location of access roads.

g. Well site or production site's existing lease boundaries, well name and number.

h. The names of abutting subdivisions or the names of owners of abutting, unplatted property within five hundred (500) feet of the well site or production site.

i. A title block showing the scale; date of preparation; and name, address and telephone number of the plan preparer, applicant and operator.

(3) Copies of the vicinity maps as submitted to the OGCC. In addition, the following information, if not provided in the vicinity map submitted to the OGCC, shall be provided to the City, including a three-mile radius around the proposed well, showing the following information:

- a. Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well.
- b. Location of existing oil and gas wells as reflected in OGCC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand-foot radius of the proposed location for the well.
- c. Location of drill site and access from one (1) or more public roads.
- d. Surface and mineral lease ownership within two hundred (200) feet of the wellhead and within four hundred (400) feet of the wellhead in high-density areas.

(4) Application requirements for narrative. In addition to the site plans and vicinity maps required in Subsections (2) and (3) above, the application shall include the following:

- a. The operator's and surface owner's names and addresses, copies of any required OGCC Form 2 and designation of agent, if applicable.
- b. An operating plan.
- c. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than OGCC.
- d. An emergency response plan that is mutually acceptable to the operator and the Fire Authority or appropriate fire district that includes a list of local telephone number of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities.
- e. A plan for minimizing negative impacts, including but not limited to, noise and vibration levels, air and water quality, odor levels, visual impacts, wildlife impacts, waste disposal and public safety.
- f. A fire protection plan that is mutually acceptable to the operator and the Fire Authority or appropriate fire district that includes planned actions for possible emergency events and any other pertinent information. Prior to the application to the City, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the Fire Authority or appropriate fire district.

(b) The process whereby a use by special review request shall be considered by the City shall follow the procedure in Chapter 18.20. (Ord. 27, 1998 §1)

**18.56.190 Application review criteria.**

The Planning Commission shall approve an application for a use by special review for a well site if the application submitted by the applicant conforms to the following requirements:

- (1) The site plans for a well site application comply with the requirements of Paragraph 18.56.180(a)(2).
- (2) The vicinity maps for a well site application comply with the requirements of Paragraph 18.56.180(a)(3).
- (3) The narrative for a well site application complies with the requirements of Paragraph 18.56.180(a)(4).
- (4) The well location and setbacks comply with Section 18.56.040.
- (5) When applicable, compliance with the provisions for mitigation of environmental impacts as required in Section 18.56.110.
- (6) When applicable, compliance with the provisions for flood plains or flood way required in Section 18.56.050.

(7) The use by special review for a well site is in compliance with the use by special review criteria in Section 18.20.070. (Ord. 4, 2006 §1; Ord. 27, 1998 §1)

**18.56.200 Notice to proceed.**

Prior to commencement of construction, drilling, redrilling or enhanced recovery operations for which a use by special review has been previously granted, a "Notice to Proceed" shall be obtained from the City. A copy of any necessary state or federal permit issued for the operation shall be provided to the City. (Ord. 27, 1998 §1)

**18.56.210 Inspections.**

(a) The operator of any producing oil or gas well within the City shall provide to the Fire Chief proof of insurance and bonding required by any City, county, state or federal law or regulation and certification of compliance with the conditions of this Chapter and the Uniform Building and Fire Codes, as adopted by the City, annually.

(b) The holder or agent of the special review permit shall allow inspections by City personnel at any reasonable hour. Failure to allow inspections for more than ten (10) days shall result in scheduling a special review permit revocation hearing before the Planning Commission. The Planning Commission's decision on a special review permit revocation based on failure to allow inspections shall be final.

(c) Any operator of any oil and gas well within the City shall remit to the City an annual inspection fee to cover the costs which the City incurs for conducting the inspections of oil and gas wells. The fee shall be determined annually by the City Manager or Manager's designee and shall be based solely on actual costs incurred by the City for inspections. This fee shall be paid not later than February 1 of the year following that for which the fee is due. Wells which have been plugged and abandoned are exempt from this fee. (Ord. 27, 1998 §1)

**18.56.220 Violation and enforcement.**

(a) It shall be unlawful to construct, drill, install or cause to be constructed or installed any oil and gas facility within the City unless approval has been granted by the City pursuant to this Title. The unlawful drilling or redrilling of any well or the production therefrom shall constitute a code infraction. The City shall have the right to abate the infraction at the sole reasonable expense of the operator of the infraction by any means to include but not be limited to:

- (1) Injunctive or other civil remedy.
- (2) A stop work order by the Community Development Director.
- (3) Removal of the nuisance by City personnel or City contractors.

(b) Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil and gas well or well site in violation of any provision of this Chapter shall be subject to the sanctions for code infractions contained in Chapter 1.33 of this Code and any other sanctions permitted under law. (Ord. 46, 2006 §2; Ord. 27, 1998 §1)

**Chapter 18.58**

**Nonconforming Uses, Buildings and Structures**

**18.58.010 Purpose and intent.**

Within the jurisdiction of this Code are lots, structures, buildings, uses and characteristics of uses which were lawful when established, but which could not be established under current provisions. Such nonconformities may be created at the effective date of this Code, or as a result of subsequent amendments which may be incorporated into this Code and may include such nonconformities as land uses, setbacks or landscaping. It is the intent of this Chapter to describe the conditions under which legal nonconforming uses, buildings and structures may continue. (Ord. 27, 1998 §1)

ATTACHMENT 2

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>Boulder Justice Center 1777 Sixth Street Boulder, CO 80302 Phone: (303) 441-3750 Fax: (303) 441-4750</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>PLAINTIFF:</b> COLORADO OIL AND GAS CONSERVATION COMMISSION,</p> <p>v.</p> <p><b>DEFENDANT:</b> CITY OF LONGMONT, COLORADO.</p>	
<p>JOHN W. SUTHERS, Attorney General JAKE MATTER, Assistant Attorney General* 1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 Phone: (303) 866-4500 Fax: (303) 866-3558 E-Mail: jake.matter@state.co.us Registration Number: 32155 *Counsel of Record</p>	<p>Case No.</p>
<p><b>COMPLAINT FOR DECLARATORY RELIEF</b></p>	

The Colorado Oil and Gas Conservation Commission, by and through the Office of the Attorney General, files this Complaint for Declaratory Relief and states:

**INTRODUCTION**

The Colorado Oil and Gas Conservation Commission (“Commission”) seeks a declaratory order invalidating portions of City of Longmont (“City”) Ordinance O-2012-25 (“Ordinance”) as preempted by the Colorado Oil and Gas Conservation Act (“Act”) and implementing regulations.

The development of oil and gas resources is a matter of statewide concern. Recent amendments to the Act and its implementing regulations preempt the City from regulating certain aspects of oil and gas operations. Further, the disputed provisions of the Ordinance are superseded by procedural and substantive standards supplied by the Commission's comprehensive regulatory structure.

The Ordinance states that the disputed provisions relate to "land use" and are properly subject to local regulation. The Commission disagrees and views the disputed provisions as relating to the regulation of oil and gas operations which, if countenanced, will undermine the Commission's statutory charge to foster the responsible development of Colorado's oil and gas resources in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources. Accordingly, the Commission requests the Court enter an order invalidating the disputed provisions of the Ordinance as preempted.

### **PARTIES**

1. The Commission is the primary state agency responsible for regulating oil and gas operations in Colorado. The Commission's office is located at 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.

2. The City is a home rule city situated within the Greater Wattenberg Area as defined by the Rules of Practice and Procedure before the Colorado Oil and Gas Conservation Commission, 2 Code Colo. Regs. 404-1 ("Commission Rules"). The City's office is located at 385 Kimbark St., Longmont, Colorado 80501.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction because the events complained of occurred in Colorado and the resolution of this dispute requires the application of Colorado law.

4. Venue is proper pursuant to C.R.CIV.P. 98(c) because the City is a resident of Boulder County.

## GENERAL ALLEGATIONS

### A. The Commission, its Powers and Duties

5. The Commission is a nine-member citizen body charged with implementing the Act, the General Assembly's detailed legislative scheme for regulating and administering oil and gas operations in the state.

6. Seven of the nine Commissioners are volunteer citizens, appointed by the Governor, with the consent of the Senate, and selected for their educational and professional expertise as well as geographic considerations. The Executive Directors of the Colorado Department of Natural Resources ("DNR") and the Colorado Department of Public Health and Environment ("CDPHE") fill the other two seats on the Commission. § 34-60-104(2)(a)(I), C.R.S.

7. The Commission conducts hearings on rules, regulations and orders at public meetings approximately once a month. The director and a professional staff of approximately 45 employees carry out day-to-day administration of the Act.

8. The Commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of the Act, and has the power to make and enforce rules, regulations, and orders pursuant to the Act, as well as to do whatever may reasonably be necessary to carry out the provisions of the Act. §34-60-105, 106, C.R.S.

9. The General Assembly has declared it to be in the public interest to foster, encourage, and promote the development, production, and utilization of oil and gas resources in the state consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources; to protect the public and private interests against waste of these natural resources; and to safeguard the coequal and correlative rights of owners and producers of oil and gas. § 34-60-102, C.R.S.

10. It is the express intent of the General Assembly to "[p]ermit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production...." § 34-60-102(1)(b), C.R.S. Further, it is the state policy to encourage, by every appropriate means, the full development of the state's natural resources. § 24-33-103, C.R.S.

## B. The Greater Wattenberg Area

11. With the exception of approximately one square mile on the western edge of the City, Longmont is situated in an oil and gas field designated by the Commission as the Greater Wattenberg Area of the Denver Julesburg Basin (“GWA”).

12. The GWA is located in northeast Colorado, primarily in Weld County, but extends into Adams, Boulder, Broomfield and Larimer Counties. The field is approximately fifty miles long and fifty miles wide covering 2,916 square miles.

13. The GWA is Colorado’s most productive oil and gas field, accounting for roughly 60% of the state’s oil production and 14% of the state’s natural gas production annually. The GWA is also Colorado’s most heavily-regulated field.

14. Pursuant to its rulemaking authority under the Act and the State Administrative Procedures Act, the Commission has enacted field-wide rules applicable to the GWA. These specific rules pertain to, among other things, baseline water sampling, well location, spacing and unit designation. See Commission Rule 318A(I) attached as **Exhibit A**.

15. “Since the initial Wattenberg Field discovery in 1970, oil and gas development has continued to increase, with significant ancillary economic benefits. Commission Rule 318A was initially adopted in April 1998. The rule, also referred to as The Greater Wattenberg Area Rule [“GWA Rule”], was promulgated in order to facilitate location of wells, and operator access to all Cretaceous age formations, without need to routinely secure Commission approval. ... The GWA Rule was driven by intense interest in hydrocarbon development in the GWA, the complex nature of the tight sands of the GWA, and the need to mitigate conflicts between mineral rights developers and surface owners with predictable and reasonably protective rules.” *Statement of Basis, Specific Statutory Authority, and Purpose for August 2011 Amendments to Commission Rule 318A* (available at <http://cogcc.state.co.us/>).

16. Effective September 2011, the Commission enacted amendments to the GWA Rule to address new technologies and practices that promote the responsible development of oil and gas resources in the GWA. Among other things, the intent of the recent amendments was to conduct water sampling in the GWA.

17. Many of the Ordinance provisions irreconcilably conflict with the Commission Rules generally, and the GWA Rule specifically. Provisions of the Ordinance usurp the Commission’s authority and harm its institutional interests by impairing its ability to fulfill its statutory mandate.

**C. 2007 Amendments to the Act**

18. The Act was originally passed in 1951 and has been amended several times. Most recently, the Act was amended in 2007, by House Bills 07-1298 and 07-1341, codified at §§ 34-60-106 and 34-60-128, C.R.S. (collectively, the “2007 Amendments”).

19. Under revised Section 106 of the Act, the Commission was required to, among other things:

a. “Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.” § 34-60-106(11)(a)(I)(A).

b. “Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission’s decision-making process.” § 34-60-106(11)(a)(II).

20. Under revised Section 128 of the Act, which is known as the Colorado Habitat Stewardship Act of 2007, the Commission was required to, among other things:

a. “[A]dminister [the Act] so as to minimize adverse impacts to wildlife resources affected by oil and gas operations.” § 34-60-128(2), C.R.S.

b. “Establish a timely and efficient procedure for consultation with the wildlife commission and division of wildlife on decision-making that impacts wildlife resources.” § 34-60-128(3)(a), C.R.S.

c. “Implement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources.” § 34-60-128(3)(c), C.R.S.

d. “Promulgate rules by July 16, 2008, in consultation with the wildlife commission, to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations.” § 34-60-128(3)(d), C.R.S.

21. The 2007 Amendments preempt conflicting local regulations and provide additional procedural and substantive requirements for the regulation of oil and gas operations in Colorado. Such statutory amendments demonstrate the General Assembly’s intent that certain aspects of oil and gas regulation are to be regulated solely by the Commission.

#### **D. The Commission’s 2008 Rulemaking**

22. By passing the 2007 Amendments, the General Assembly directed the Commission to comprehensively update the Commission Rules pursuant to the State Administrative Procedures Act to specifically protect the environment and wildlife resources. §§ 34-60-102(1)(a)(I), 128(3)(d), C.R.S.

23. By passing the 2007 Amendments, the General Assembly also directed the Commission to “[p]romulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations.” § 34-60-106(11)(a)(II) (“2008 Rulemaking”).

24. “A major reason for [2008 Rulemaking] was to address concerns created by the unprecedented increase in the permitting and production of oil and gas in Colorado in the past few years.” *Statement of Basis, Specific Statutory Authority, and Purpose for 2008 Amendments to Commission Rules*, p. 1.

25. During the 2008 Rulemaking, the Commission developed new regulations in collaboration with CDPHE to protect water resources and prevent degradation of the environment. *See* Commission Rules 317B and 324A.

26. The Commission also developed extensive new regulations in collaboration with Colorado Parks and Wildlife (“CPW”). These regulations

impose special operating requirements in all areas, apply additional operating requirements in sensitive wildlife habitat and restricted surface occupancy areas, mandate consultation with the CPW in sensitive wildlife habitat, and require operators to avoid restricted surface occupancy areas where feasible. As a result of these new regulations, the Commission consults with the CPW where appropriate. *See* Commission Rules 1202-1206 and Commission 1000 Series Rules.

27. Eleven counties and two cities were formal parties to the 2008 Rulemaking. The City did not participate.

28. The 2008 amendments to the Commission Rules preempt conflicting local regulations and provide additional procedural and substantive requirements for the regulation of oil and gas operations in Colorado. These rules expand the preemptive effect of the Commission's regulatory structure and displace conflicting local regulations.

#### **E. The City's Regulation of Oil and Gas Operations**

29. On December 20, 2011, the City imposed a 120 day moratorium on accepting applications for City oil and gas well permits. The moratorium was set to expire April 17, 2012, but was extended to June 16, 2012.

30. On February 10, 2012, the City released the first draft of its oil and gas regulations. Shortly thereafter, the director and other members of the Commission staff met with the City to express the Commission's concern that some of the draft regulations were preempted, to explain the Commission's regulatory structure and to explore ways in which the Commission could address the City's concerns through the Commission's existing regulatory program.

31. The City and the Commission discussed opportunities for the City's Local Governmental Designee ("LGD") to influence the Commission's decision making by collaborating in the development of Comprehensive Drilling Plans, receiving advance notice of permit applications submitted to the Commission by an operator, and requesting "technically feasible and economically practicable conditions of approval" to Commission permits. Commission Rule 216, 305.b. and 305.d.

32. In the context of a particular application, if the Commission staff refuses to impose a condition of approval requested by an LGD, then the LGD

has a right to petition the entire nine-member Commission to attach the desired condition of approval under Commission Rule 503.b.(7).C.

33. The City issued numerous drafts of its proposed regulations and, on each occasion, the Commission expressed its concern that some of the proposed rules, if adopted, would be preempted.

34. On April 27, 2012, the Commission, through counsel, submitted written comments on the City's proposed regulations. Specifically, the Commission expressed concern that the rules at issue in this complaint were preempted, including:

a. The City's claimed right to assess the "appropriateness" of certain technical oil and gas operation practices and impose additional conditions as required conditions of approval, including the use of multi-well sites, directional and horizontal drilling techniques, and relocating facilities.

b. The City's *per se* ban on surface oil and gas operations and facilities in residential zoning districts.

c. The City's claimed right to impose water sampling requirements on GWA operators above and beyond those required by the Commission's applicable rule, which requires baseline water sampling in the GWA. Commission Rule 318A(I).a.(4).

d. The City's imposition of riparian setbacks on oil and gas operations which are above and beyond Commission Rules to protect water resources.

e. The City's requirement that operators comply with the habitat and species protection provisions of the Longmont Municipal Code, even where the code imposes a higher or more restrictive standard than that imposed by the Commission Rules.

35. The Commission's concerns were not addressed in the City's final draft of its regulations, and on May 8, 2012, the City conditionally approved its amended oil and gas regulations through a first reading.

36. The second and final reading of the Ordinance was to occur on May 22, 2012. However, on May 21, 2012, the Executive Director of DNR, Mike King,

wrote a letter to the City stating that a patchwork of local oil and gas regulations was contrary to the statewide public interest as expressed by the General Assembly, and that the parties should continue to work together to coordinate their regulatory efforts and collaborate on ways to ensure that oil and gas development in the City proceeds in a responsible manner. In response to Mr. King's letter, the City delayed the passage of its oil and gas regulations and extended its moratorium for an additional 45 days.

37. The Ordinance was tabled and the City moratorium extended to allow time for City staff to meet with the Commission, the Colorado Oil and Gas Association and TOP Operating Company ("TOP") to discuss state permitting procedures and to negotiate agreements between the City and TOP regarding potential drilling locations on City owned properties as well as TOP's agreement to utilize various operating standards desired by the City. The City and TOP subsequently entered into such agreements which were approved by City Council on July 17, 2012.

38. On July 17, 2012, the City Council also approved the Ordinance, attached as **Exhibit B**, over the Commission's objection.

39. No possible construction of the disputed provisions of the Ordinance can be harmonized with the state regulatory regime, and the Ordinance is superseded by procedural and substantive standards supplied by the Commission's comprehensive regulatory process. See Local Government Land Use Control Enabling Act of 1974, § 29-20-107, C.R.S.

40. All necessary parties are before the Court pursuant to C.R.CIV.P. 57(j), and an actual and justiciable controversy exists between the Commission and the City regarding the parties' respective rights to regulate oil and gas operations.

41. Pursuant to § 13-51-101, C.R.S. *et seq.*, and C.R.CIV.P. 57, this Court may declare the parties' respective rights, status and other legal relations.

## FIRST CLAIM FOR DECLARATORY RELIEF

### *The City's Claimed Right to Determine When the Use of Multi-Well Sites and Directional and Horizontal Drilling Techniques are "Possible or Appropriate" is Preempted*

42. The Commission incorporates the foregoing allegations by reference.

43. The Ordinance infringes on the Commission's authority to regulate technical aspects of oil and gas operations by vesting the City with authority to assess the appropriateness of certain technical oil and gas operations practices and by imposing such conditions as required conditions of approval, including the use of multi-well sites, and directional and horizontal drilling techniques:

Multi Well Sites and Directional/Horizontal Drilling: Oil and gas well operations and facilities will be consolidated on multi well sites and directional and horizontal drilling techniques will be used whenever possible and appropriate. In determining appropriateness, the benefits of consolidation and the use of directional and horizontal drilling, such as drilling from outside of a prohibited zoning district, minimizing surface disturbance and traffic impacts and increasing setbacks, will be weighed against the potential impacts of consolidated drilling and production activities on surrounding properties, wildlife and the environment.

Ordinance, pp. 12-13.

44. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing directional drilling and multi-well sites. Commission Rules 303.c.(3), 318A(I).e, 321, 508.b.(2).B.(v) and 1002.d.

45. Because a Commission permit to drill is a prerequisite to obtaining a City oil and gas well permit, Ordinance, pp. 9-10, the City's claimed right to assess "the benefits of consolidation and the use of directional and horizontal drilling" undermines the General Assembly's directive for the Commission to "[p]romulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit," by requiring operators to reengineer

operations previously analyzed and approved by the Commission’s permitting staff. § 34-60-106(11)(a)(I)(A), C.R.S.

46. The City has no authority to assess “the benefits of consolidation and the use of directional and horizontal drilling” or relocate a well previously permitted by the Commission because the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, environmental restoration and location and spacing of wells.

47. The City’s claimed right to assess “the benefits of consolidation and the use of directional and horizontal drilling” usurps the Commission’s statutory authority to, among other things, assess and “[i]mplement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources.” § 34-60-128(3)(c), C.R.S.

48. The City’s claimed right to assess “the benefits of consolidation and the use of directional and horizontal drilling” is preempted.

49. The City’s claimed right to assess “the benefits of consolidation and the use of directional and horizontal drilling” is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

## **SECOND CLAIM FOR DECLARATORY RELIEF**

### ***The City’s Setback Rules are Preempted***

50. The Commission incorporates the foregoing allegations by reference.

51. Efficient and equitable oil and gas production is closely tied to well location and spacing. Non-uniform or irregular setback rules affect well location and spacing, and hence, oil and gas production.

52. Oil and gas are found in subterranean pools, the boundaries of which do not conform to any jurisdictional pattern. As a result, scientific drilling methods are necessary for the productive recovery of these resources. It is necessary to drill wells in a pattern dictated by the pressure characteristics of the pool, and because each well will only drain a portion of the pool, an irregular drilling pattern will result in less than optimal recovery and a corresponding waste of oil and gas.

53. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing the location and spacing of wells and setbacks. *See* Commission Rules 318, 318A, and 603.

54. The Commission’s well location, spacing and setback rules are central to the Commission’s statutory mandate to “[p]rotect the public and private interests against waste in the production and utilization of oil and gas” and “[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas.” §§ 34-60-102(1)(a)(II) and (III), C.R.S.

55. The Commission’s well location, spacing and setback rules also further the state interest to permit “each oil and gas pool in Colorado to produce up to its maximum efficient rate of production....” § 34-60-102(1)(b), C.R.S.

56. Non-uniform or irregular location, spacing and setback rules undermine the Commission’s statutory mandate by resulting in the inefficient and improper use or dissipation of reservoir energy, the reduction in quantity of oil or gas ultimately recoverable from a pool, and the abuse of correlative rights.

57. The City’s setback for water bodies incorporates the Longmont Municipal Code (“LMC”) by reference and imposes a “minimum” setback of 150’ from certain specific stream corridors and riparian areas and imposes a 100’ setback in all other instances. Ordinance, p. 22. The LMC vests the City with authority to depart from these stated minimum setbacks.

58. The City’s setback for wildlife and wildlife habitat also incorporates the LMC by reference and imposes an unspecified “development setback from any important wildlife habitat area, riparian area, or plant species area.” Ordinance, p. 26.

59. The Commission’s well location, spacing and setback rules further the Commission’s statutory mandate to “[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.” § 34-60-102(1)(a)(I), C.R.S.

60. The Commission Rules do not impose riparian or wildlife setbacks or buffers in all instances. The Commission has passed numerous regulations

for the protection of water resources. In addition to the Commission’s technical regulations meant to ensure wellbore integrity and proper waste management, Commission Rule 317B provides extensive requirements concerning “Public Water System Protection” and Commission Rule 324A requires that any operation shall not degrade air, water, soil or biological resources.

61. During the 2008 Rulemaking, the Commission considered adopting setbacks for riparian areas, but decided not to because the Commission Rules already “require operators to reduce adverse impacts on wildlife resources by using directional drilling where feasible and to avoid or minimize wetland and riparian impacts and consolidate facilities and rights-of-way to the extent practicable.” *Statement of Basis, Specific Statutory Authority, and Purpose for 2008 Amendments to Commission Rules*, p. 71.

62. The City’s setbacks for water bodies and setbacks for wildlife and wildlife habitat are preempted.

63. The City’s setbacks for water bodies and setbacks for wildlife and wildlife habitat are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **THIRD CLAIM FOR DECLARATORY RELIEF**

#### ***The City’s Wildlife Habitat and Species Protection Rules are Preempted***

64. The Commission incorporates the foregoing allegations by reference.

65. The Ordinance infringes on the Commission’s authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

66. The Ordinance requires operators seeking to conduct oil and gas operations in the City to not only comply with the Commission’s wildlife and habitat protection rules, but also comply with the City’s municipal code pertaining to habitat and species protection:

Oil and gas facilities shall comply with federal and state requirements regarding the protection of wildlife and habitat, including the COGCC

wildlife resource protection rules, and the provisions of LMC section 15.035.030, ‘Habitat and Species Protection.’

Ordinance, p. 26.

67. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing the protection of wildlife and wildlife habitat. *See, e.g.*, Commission Rule 1200-Series, Protection of Wildlife Resources.

68. LMC § 15.035.030 is intended to go farther than applicable Commission Rules and expressly states that “[w]hen this section imposes a higher or more restrictive standard, this section shall apply.”

69. LMC § 15.035.030 imposes extensive additional regulations on operators seeking to conduct oil and gas operations in the City and provides, among other things, that:

a. The City planning director shall determine whether the proposed oil and gas operations are located in an area of “important plant or wildlife species or important wildlife habitat areas.” In doing so, the City planning director is required to consult “Colorado Division of Wildlife habitat maps for Boulder and Weld Counties, as amended from time to time [and] [o]ther maps or surveys completed by Boulder or Weld Counties, such as the ‘map of wildlife and plant habitats, natural landmarks and natural areas’ included in Boulder County’s comprehensive plan, as amended from time to time.”

b. “All development shall provide a development setback from any important wildlife habitat area, riparian area, or plant species area, identified according to this chapter.”

c. “On any site containing important wildlife habitat area [as determined by the City planning director], the applicant shall retain a qualified professional to recommend native and adapted plant species that may be introduced.”

d. “The applicant shall retain a qualified person with demonstrated expertise in the field and who is acceptable to the planning director to prepare a species or habitat conservation plan required by this section.”

70. The City's wildlife habitat and species protection rules are preempted.

71. The City's wildlife habitat and species protection rules are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

#### **FOURTH CLAIM FOR DECLARATORY RELIEF**

##### ***The City's Residential Surface Facilities and Operations Ban Is Preempted***

72. The Commission incorporates the foregoing allegations by reference.

73. The Ordinance provides that "City oil and gas well permits may be issued for sites within the City excluding oil and gas well surface operations and facilities in residential zoning districts." Ordinance, p. 3. The Ordinance does not define "surface operations and facilities," but broadly defines "oil and gas well facility" and "oil and gas well operations." *Id.*, pp. 31-32.

74. For purposes of the City's ban, residential zoning includes not only current residential areas, but also areas of "planned residential uses." *Id.*, p. 3.

75. In order to facilitate the location of wells, insure operator access to oil and gas resources, and minimize surface disturbance, the Commission has established predetermined GWA "drilling windows." Commission Rule 318A(I).a. The City's ban conflicts with these pre-established windows.

76. The City's prohibition is preempted because it impairs the Commission's statutory mandate to "[p]rotect the public and private interests against waste in the production and utilization of oil and gas" and "[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas." §§ 34-60-102(1)(a)(II) and (III), C.R.S.

77. The City's prohibition is preempted because it undermines the state interest to permit "each oil and gas pool in Colorado to produce up to its maximum efficient rate of production...." § 34-60-102(1)(b), C.R.S.

78. The City's prohibition will have an extraterritorial effect on the development and production of oil and gas. The City' ban affects the ability of

owners of oil and gas in pools that underlie both the City’s residential areas, including “planned” residential areas, and land outside the City to obtain an equitable share of production profits in contravention of the Act.

79. The City’s residential surface facilities and operations ban is preempted.

80. The City’s residential surface facilities and operations ban is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **FIFTH CLAIM FOR DECLARATORY RELIEF**

#### ***The City’s Chemical Reporting Rule is Preempted***

81. The Commission incorporates the foregoing allegations by reference.

82. The Ordinance infringes on the Commission’s authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

83. The Ordinance requires operators to provide “full disclosure” of all hazardous materials that will be transported on any roadway in the City. Such reports shall be made to the City hazards prevention office and will be “treated as confidential and will be shared by other emergency response personnel only on an as needed basis.” Ordinance, pp. 14-15.

84. The City’s chemical reporting rule conflicts with § 34-60-106(1)(e), C.R.S. and Commission Rules 205 and 205A. Pursuant to the Act, the Commission has exclusive statutory authority to require operators to maintain certain books and records, to inspect those records and to require operators to make “reasonable reports” to the Commission concerning oil and gas operations. Section 34-60-106(1)(e), C.R.S. excludes the City by omission as an entity authorized to require reports of oil and gas operations.

85. Under Commission Rules 205 and 205A, operators are required to compile Materials Safety Data Sheets and chemical inventories for any chemical products brought to a well site for use downhole during drilling, completion, and

work-over operations and are required to report chemicals used in hydraulic fracturing operations.

86. Commission Rules 205 and 205A also authorize the Commission to immediately obtain any information from vendors, suppliers and operators necessary to respond to a spill, release or complaint. Commission Rules 205 and 205A also provide protections for information claimed to be a trade secret.

87. Commission Rule 205A, concerning the disclosure and reporting of chemicals used in hydraulic fracturing operations, was enacted in December 2012 and has been heralded as a national model.

88. The City's chemical reporting rule is preempted.

89. The City's chemical reporting rule is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

#### **SIXTH CLAIM FOR DECLARATORY RELIEF**

##### ***The City Visual Mitigation Methods are Preempted***

90. The Commission incorporates the foregoing allegations by reference.

91. The Ordinance claims to vest the City with authority to condition approval of a City oil and gas well permit on an operator's use of "low profile tanks [and/or a] minor relocation of the facility to a less visible location...." Ordinance, pp. 19-20 ("City Visual Mitigation Methods").

92. The City Visual Mitigation Methods pertain to oil and gas operations, not land use, and are comprehensively regulated by the Commission Rules. *See, e.g.*, Commission Rule 804 (Visual Impact Mitigation).

93. The City has no authority to condition the issuance of a City oil and gas well permit on its imposition of the City Visual Mitigation Methods.

94. The City Visual Mitigation Methods are preempted because they impair the Commission's statutory mandate to "[p]rotect the public and private interests against waste in the production and utilization of oil and gas" and "[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas." §§ 34-60-102(1)(a)(II) and (III), C.R.S.

95. The City Visual Mitigation Methods are preempted because they undermine the state interest to permit “each oil and gas pool in Colorado to produce up to its maximum efficient rate of production....” § 34-60-102(1)(b), C.R.S.

96. The City Visual Mitigation Methods are preempted.

97. The City Visual Mitigation Methods are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **SEVENTH CLAIM FOR DECLARATORY RELIEF**

#### ***The City’s Water Quality Testing and Monitoring Rule is Preempted***

98. The Commission incorporates the foregoing allegations by reference.

99. The Ordinance infringes on the Commission’s authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

100. The Ordinance provides that operators seeking to conduct oil and gas operations in the City shall comply with the Commission Rules governing water well testing procedures and requirements. Ordinance, pp. 22-23.

101. The Commission Rule governing water well testing procedures and requirements in the GWA, and therefore all but one square mile of the City, is Commission Rule 318A(I).a.(4), which requires baseline water sampling “prior to the first well proposed within a governmental section” and provides general requirements for the selection of the well to be tested and laboratory testing criteria (the “GWA Water Sampling Rule”).

102. In addition to incorporating the GWA Water Sampling Rule by reference, the Ordinance goes farther than the applicable Commission Rule by vesting the City with authority to require, in its sole discretion, additional water sampling above and beyond the requirements of the GWA Water Sampling Rule.

103. Under the City’s water quality testing and monitoring regime, an operator must “submit a water quality monitoring plan to the City for review and approval.” Ordinance, p. 23 (“City Plan”).

104. The City Plan, at a minimum, must identify the number of wells needed to establish baseline groundwater quality up-gradient and down-gradient of the proposed oil and gas operations; constituents to be sampled for; frequency of sampling; analytical methods to be used; and, proposed frequency of reporting results to the City and the Commission. Ordinance, p. 23.

105. “Oil and gas well operators shall fund the development and implementation of the [City Plan] and program for the duration of operations on the site and for a minimum of five (5) years following completion of operations and abandonment of the well(s).” Ordinance, p. 23.

106. The City Plan is preempted.

107. The City Plan is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **EIGHTH CLAIM FOR DECLARATORY RELIEF**

#### ***The City has no Authority to Adjudicate Operational Conflicts***

108. The Commission incorporates the foregoing allegations by reference.

109. The Ordinance requires operators to comply with the disputed provisions discussed above and claims to enable the City to attach additional preempted conditions of approval to a City oil and gas well permit even though an operator is required to have already obtained a Commission permit to drill “prior to issuance of a City oil and gas well permit.” Ordinance, pp. 9-10.

110. Therefore, in an effort to avoid operational conflicts arising out of the City’s successive permitting regime, the City has included an “operational conflicts special exception” waiver process in the Ordinance. Ordinance, pp. 7-8.

111. Under the City’s waiver process, the City shall decide whether an “operational conflict between the requirements of [the Ordinance] and the State’s interest in oil and gas development [exists] in the context of a specific application.” Ordinance, p. 7.

112. If the City “finds, based upon competent evidence in the record, that compliance with the requirements of [the Ordinance] shall result in an operational conflict with the state statutory and regulatory scheme, a special exception to this section **may** be granted, in whole or in part, but only to the

extent necessary to remedy the operational conflict.” Ordinance, p. 7 (emphasis added).

113. The resolution of such a dispute, in the first instance, is for the District Courts of Colorado, not the City’s “decision making body.” Ordinance, pp. 7-8. Moreover, if an operational conflict is present, the City regulation **must** yield to the state interest.

114. The City’s waiver process vests the ultimate determination in the City as to whether a conflict exists and, further, places additional requirements on the applicant where an operational conflict exists instead of simply precluding the City regulation.

115. Moreover, the Commission Rules provide an extensive LGD process to address local concerns and avoid such conflicts. Commission Rules 305, 306, 503.b.(7).

116. The City’s attempt to use the waiver process if it determines there is an operational conflict does not shield the disputed provisions from being preempted. The waiver is illusory because the City has no authority to determine whether an operational conflict exists.

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests this Court to declare that the foregoing disputed provisions of the Ordinance are preempted by the Colorado Oil and Gas Conservation Act and its implementing regulations and are therefore invalid, and enter judgment in favor of the Commission and against the City on all claims, and granting such further relief as this Court deems just and appropriate.

Dated this July 30, 2012

JOHN W. SUTHERS  
Attorney General

A handwritten signature in black ink, appearing to read "Jake Matter", is written over a horizontal line.

JAKE MATTER, 32155\*

Assistant Attorney General  
Resource Conservation  
Natural Resources & Environment  
Attorneys for Colorado Oil and Gas  
Conservation Commission  
\*Counsel of Record

Address of Plaintiff:  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203



**CITY OF LOVELAND**  
 ECONOMIC DEVELOPMENT OFFICE  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 13  
**MEETING DATE:** 8/21/2012  
**TO:** City Council  
**FROM:** Betsy Hale, Economic Development Director  
**PRESENTER:** Betsy Hale, Economic Development Director  
 Brent Worthington, Finance Director  
 Mike Scholl, Economic Development Manager  
 Robin Shukle, LCBD Director

**TITLE:** Discussion regarding the Loveland Center for Business Development and an additional funding request for 2013.

**RECOMMENDED CITY COUNCIL ACTION:** This is information only item; no action is required. Staff is seeking direction from City Council.

**DESCRIPTION:** The City of Loveland has provided financial support for small business development and entrepreneurship training since the early 1990's. The City has received a budget request from the Loveland Center for Business Development (LCBD) for an increase of \$80,000.00 in 2013. The City's current contribution is \$130,000.00. This discussion is intended to provide Council with information and give staff direction on this request and possible contract provisions.

**BUDGET IMPACT:** No action will be taken at this time.

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:** The LCBD is a private non-profit provider of small business development and entrepreneurship training. The organization assists startup and existing business owners. This discussion will cover the history of the organization, the current board and organizational structure, the current financial condition, the activities of the LCBD and options related to the funding and service delivery.

**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:**

1. Staff Report
2. LCBD Letter of Request
3. Staff Presentation
4. Financial Summary
5. LCBD Presentation
6. LCBD Documents



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## MEMORANDUM

**To:** Loveland City Council

**From:** Betsey Hale, Director, Economic Development Department  
Brent Worthington, Director, Finance Department  
Mike Scholl, Economic Development Department

**Date:** August 16, 2012

**RE:** Staff Report/Loveland Center for Business Development Contract

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### Background:

The following report was prepared by City staff in response to the request by the Loveland Center for Business Development (LCBD) for an increase in annual City funding to \$210,000 from \$130,000. The request for additional funding was due to increased expenses required to maintain the current level of service as reported by the LCBD. The report includes a review of the history, finances, board structure and services. In addition, staff is seeking direction from Council on the LCBD. Robin Shukle, the current Executive Director of the LCBD will give a brief presentation on the program benefits and impacts.

### History:

The LCBD was started in 1990 under the guidance of the Loveland Economic Development Council (LEDC was a precursor to the Northern Colorado Economic Development Corporation) and the City of Loveland. At the time, the City had engaged in a public and competitive project that led to the expansion of Woodward Governor at its current location on Wilson Avenue. Following that effort, Loveland City Council felt it was important to also support its existing small businesses and the LCBD was created.

The LCBD was created as a function of the City in partnership with the Chamber of Commerce. The first director, Kathy Kregel was a city employee who served until 1997. The LCBD had a 5-7 member board of directors which included a City representative, Chamber member and a Loveland Economic Development Council member. There were also local business leaders on the board and the office was located at Chase Bank in Downtown Loveland. The program plan

for the LCBD was modeled after the U.S. Small Business Administration's Small Business Development program which also started in 1990. The LCBD became a 501(c)6 in 1994. The designation was done for the purpose of establishing a microloan program. It was not the intent of the Loveland Economic Development Council (LEDC) or the City to have the LCBD operate as a non-profit and compete for fundraising dollars with the LEDC. Quarterly reports were provided to the City Manager and Council by the LCBD.

A new director, Mike Pickett was hired in late 1997 and served until March of 2000. The new director was no longer a City employee but was required to provide Council with an annual report. It was at this time that the LCBD became a stand-alone organization housed with the LEDC. In-kind contributions of space, phone, and utilities were provided by the LEDC to the LCBD. The six member board still consisted of a Chamber member, Loveland Economic Development Council member and one City representative.

From 2000 to 2006, Kelly Peters, who currently works for NCEDC, was hired as the Executive Director. At the onset of her term, she was a City employee, but was later moved to the LCBD at the request of the City. The LCBD moved from the Chase building to Centerra to collocate with the Northern Colorado Economic Development Corporation (NCEDC) and later at the direction of the LCBD board, to the Loveland Chamber of Commerce office. In 2004, the LCBD board voted to become a 501(c)3. This change was made to provide the entity the ability to fundraise, receive grants and seek other funding partners.

In July 2006, Don Abbott was hired as the Executive Director and was made a City employee. The decision was made by the City Manager at the request of the applicant primarily for the benefits package. The board structure remained unchanged.

In 2008, the LCBD hired Robin Shukle, the current Executive Director. The position was moved from the City to Front Range Community College (FRCC) to be part of the State Small Business Development Center network and part of the Larimer County SBDC. The LCBD board, in an effort to leverage resources, entered into a Memorandum of Understanding with FRCC. The agreement was for three years. In October of 2011, the LCBD board decided not to renew the agreement with FRCC and the State SBDC network due to operational differences. The levels of service during LCBD's history remained consistent and high quality.

In 2011, the LCBD moved to the current location on 4th Street to accommodate additional staff and for space to offer classes which had historically been held in the City's IT Lab.

#### **Financial Review:**

In June 2012, the City Manager received a request from the LCBD for a permanent \$80,000.00 increase of the City's annual contribution of \$130,000.00. This would make the new

contribution \$210,000.00. This increase would not result in new levels of service or staff but would meet the LCBD's current operating costs.

The City Manager directed Brent Worthington, City Finance Director to review the LCBD's financial history. A brief review of revenue established that the City Contribution increased from \$105,000 in 2007 to \$130,000 currently. This comprises about 95% of LCBD revenue. Class tuition has remained fairly steady, with a slight downward trend; however, class tuition is only about 5% of total revenue.

A review of expenses shows that salaries and associated personnel costs have increased about 60% (from \$87,000 to \$137,000) since 2007, with the inclusion of a second staff position in 2008 or 2009, and subsequent increases in salary and benefits. Rent and Utilities have increased close to 400% since moving to the 4th street location (from \$4,700 to \$16,300). Also associated with the move is the addition of about \$9,500 annually for copy machine rental, maintenance/cleaning, and telephone/internet costs and the LCBD acquired a software system with an annual cost of \$9,900.

While there is nothing remarkable or unexpected in these cost increases, the result has been an annual operating loss each year since at least 2009. The 2011 operating shortfall was \$54,175 and the projected operating shortfall in 2012 is \$59,810. These losses have been principally covered by reserves.

The current plan for 2012 is to meet the shortfall through a combination of fundraising and expense reductions. LCBD is making no additional request of the City for 2012 funds.

**Contract for Services:**

The current contract with the LCBD was approved administratively on March 7, 2012 and made retroactive to July 1, 2011. The contract calls for funding of \$130,000 annually subject to Council appropriation. The contract is automatically renewed on July 1 for the following calendar year in perpetuity. The contract can be terminated without cause with a six month notice or by defunding the contract through the appropriation process.

The services are defined in section 2:

“Contractor shall provide both complimentary and fee-based professional services promoting business development in the City, specifically include, but not be limited to, business education, counseling, and training services to individuals and small businesses seeking to start or grow a Loveland business, including individual counseling and services as well as group classes and services. Business counseling may include, as determined by the LCBD Board in its discretion, developing marketing plans, market

research, preparing cash flow projections, assisting a business in selecting a banking relationship and overseeing a micro loan program for new or growing Loveland businesses. In addition, LCBD may offer services described herein to businesses based outside of Loveland on a fully burdened cost-recovery basis.”

These services remain consistent with the LCBD’s fundamental direction over its history, to provide help in the development of small business in Loveland.

**Board Structure:**

The current five – seven member board includes as voting members, Councilor Phil Farley and Assistant City Manager Rod Wensing, who also acts as Board Treasurer. Membership also includes the Executive Director of the Chamber of Commerce. Board meetings are private.

The current Board structure reflects the long practice of involvement of City staff and Council members as Board members. At various times in the past, city representatives have occasionally made up a majority of the Board.

At the July Board meeting, Mike Scholl was appointed as the staff liaison to the LCBD board from the Economic Development Department, which was recently assigned to oversee the LCBD contract. Further, while having City staff as a voting board member was an outgrowth of the LCBD’s organizational evolution with the City, the City Manager directed staff that upon completion of the board term in December 2012, no additional City staff is to serve as a voting member of the LCBD board.

**Confidentiality and Accountability:**

The LCBD maintains strict confidentiality with the clients it serves largely to protect personal financial information. This is standard operating practice for Small Business Development Centers. Likewise, it is standard practice for almost all economic development programs of any type.

The need for client confidentiality does create some obstacles in oversight of the contract. The LCBD has submitted reports of client served, new jobs and capital raised, but staff cannot completely verify the accuracy of the reports. Staff has received some anecdotal information from LCBD clients but it does not cover all the operations of the LCBD.

**Similar or Related Services:**

The LCBD provides substantially the same services as the Larimer County Small Business Development Center (SBDC) office, which can provide services to Loveland companies and residents. The Larimer County SBDC is funded through the Small Business Administration and

Front Range Community College. Also, the Larimer County SBDC is expected to pilot a new technology transfer program this year. The Larimer County SBDC provides many of the same classes and counseling services. In addition, it maintains active relationships with area banks that refer small businesses interested in applying for SBA funding.

The Larimer County SBDC does not maintain an office in Loveland, so local businesses would need to travel to Fort Collins or elsewhere to access services. But it is available to all residents of Larimer County at no extra cost. The following tables provide a side by side comparison of the classes and counseling services being offered by LCBD.

(The following is taken directly from the respective websites)

LCBD Workshop	Larimer County SBDC Workshop
<p><b><a href="#">So You Want to Start a Business</a></b> <a href="#">Register</a>                      Tuesday, July 17, 2012 8:00 AM to 10:30 AM                      This class is a prerequisite to scheduling a counseling session at the Loveland Center for Business Development. The cost is \$20 for Loveland residents and \$30 for Non-Loveland residents pay \$30. Explore the basics of business ownership, including entrepreneurship, planning for a profitable business, pitfalls to avoid and how to reach your customers.</p>	<p><b><a href="#">So You Want to Start a Business? »</a></b>                      This class is a prerequisite for start-ups to schedule a counseling session at the Larimer SBDC. Explore the basics of business ownership, including entrepreneurship, planning for a profitable business, pitfalls to avoid and how to reach your customers.                      Speaker(s): Andrea Grant</p>
<p><b><a href="#">Creating a Great Business Plan</a></b> <a href="#">Register</a>                      Wednesday, July 25, 2012 8:00 AM to 10:30 AM                      In this class you will learn the key elements of a successful business plan and why creating a business plan is an essential step for any entrepreneur or business owner. This course will guide you in creating your own business plan and provide you the tools to make it easy. The registration fee for this class includes a copy of the book, "Successful Business Plan Secrets &amp; Strategies" by Rhonda Abrams.</p>	<p><b><a href="#">Business Planning for Success »</a></b>                      A Business Plan articulates the business concept, potential markets, financial requirements risks, problems and trade offs. Make the most of your resources and prepare yourself for success with the "Business Planning for Success" workshop.                      Speaker(s): Deborah Moeck</p>
<p><b><a href="#">Financial Statements Nuts and Bolts</a></b> <a href="#">Register</a>                      Thursday, July 12, 2012 8:30 AM to 10:00 AM                      Do financial statements frustrate you? Are you concerned that you're not getting the most out of your financial documents? Are you confused as to how the financial puzzle pieces fit together? Well, we've got some help for you. Financial Statement Nuts and Bolts will clear away the fog and provide you with the confidence you would like to have. We begin with the basics – the statements you need to run your business – and then we will drill down into each of the statements so that you are familiar with the parts and their relationship with other sections of the statement. We will conclude by showing the relationship of one statement to another. Feel free to bring you own financial statements so that you can see how yours compares with the model and ask specific questions.</p>	<p><b><a href="#">Know Thy Numbers; basic bookkeeping »</a></b>                      Learn the what, how and why of bookkeeping. Understand what bookkeeping can tell you about your business and how it can help you manage. Learn what data you need to keep track of, how to avoid common mistakes and when to call in a bookkeeper or accountant. Discover effective bookkeeping from chart of accounts to financial statements.                      Speaker(s): Beth Dixon, CPA</p>
<p><b><a href="#">Cash is King, Cash Flow Basics</a></b> <a href="#">Register</a>                      Thursday, July 19, 2012 10:00 AM to 12:00 PM                      A hands-on class to help you plan and understand the cash flow and cash needs of your business.</p>	<p><b><a href="#">Will My Business Make Money? »</a></b>                      Prerequisite: Must know Excel. This 4 hour workshop is a good place to start with compiling financial projections. It includes formulated spreadsheets that help create your budgets. Learn how to forecast sales and revenue, create a cash flow budget, determine time to secure funding, use financial statements to develop business plans, make better management decisions and set financial performance goals.                      Speaker(s): Pavel Verbsky</p>
<p><b><a href="#">Growing Your Business Through Facebook</a></b> <a href="#">Register</a>                      Wednesday, July 18, 2012 4:00 PM to 5:30 PM                      Social Media tools have forever changed how the world does businesses today. Most people have a personal Facebook account, but are not sure how to use it for business. Don't be left behind as businesses shift to social networks like Facebook. This class will help you understand all the steps involved in using Facebook as a specific tool to grow your business. We will cover Why you need a Fan Page, and a Professional Profile, and how to set them up. How to use your Fan Page, and Profile to get new business. Effective Online Marketing Techniques specific to Facebook.</p>	<p><b><a href="#">Building Effective Websites »</a></b>                      This 90 minute workshop covers tips and tricks you can use to build a great-looking website from scratch or fix the one you've got. We'll also give a quick intro into WordPress - a content management system (CMS) which allows quick and easy edits of website content without the need to hire a web designer. You also have the opportunity to submit your web address ahead of time for professional critique during class.                      Speaker(s): Nick Armstrong, Web Strategist</p>

Counseling Services

(The following is taken directly from the respective websites)

LCBD	Larimer County SBDC
<p><b>Our counseling goals include:</b></p> <ul style="list-style-type: none"> <li>• <b>Helping you determine whether self-employment and the type of business you have chosen are right for you</b></li> <li>• <b>Helping you identify the strengths and weaknesses of your skills, knowledge, interest, and resources in managing each aspect of your business</b></li> <li>• <b>Helping you determine if your business or business idea will be profitable.</b></li> <li>• <b>Helping you network with other business and community resources that can provide valuable information and expertise to your business start-up or expansion. <i>Resources include volunteer business advisors and mentors specializing in areas such as financial analysis, franchising, legal and tax structuring, and marketing.</i></b></li> <li>• <b>Helping you finance your small business, through your own resources, venture capital, or bank loans</b></li> </ul> <p><b>If you are starting a new business, the “So You Want to Start A Business” workshop is a prerequisite prior to scheduling your initial counseling session. The cost of this workshop is \$20 for Loveland residents and \$30 for non-Loveland residents – see Events</b></p>	<p><b>Our counseling goals include:</b></p> <ul style="list-style-type: none"> <li>• Helping you determine whether self-employment and the type of business you have chosen are right for you</li> <li>• Helping you identify the strengths and weaknesses of your skills, knowledge, interest, and resources in managing each aspect of your business</li> <li>• Helping you network with other business and community resources that can provide valuable information and expertise to your business start-up or expansion</li> <li>• Resources include volunteer business advisors and mentors specializing in areas such as financial analysis, franchising, legal and tax structuring, and marketing</li> <li>• Helping you finance your small business, through your own resources, venture capital, or bank loans</li> </ul> <p>If you are starting a <u>new business</u>, sign up for "So You Want to Start a Business". This class is a prerequisite to scheduling a counseling session at the Larimer SBDC. Explore the basics of business ownership, including entrepreneurship, planning for a profitable business, pitfalls to avoid and how to reach your customers.</p>

and Workshops tab to register.	
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The State SBDC operates a statewide network of small business development centers including the Larimer County SBDC. The State office has indicated that they could open and staff a Loveland office for around \$75,000 annually. However, this may be a very different service level, and the City would need to ensure that Loveland residents continue to receive the same level of services from the State SBDC that it currently receives from the LCBD.

In addition, the City is a partner in the Rocky Mountain Innosphere (RMI), which provides business services and counseling to five (5) Loveland startup high tech companies. Under the contract, the City is allocated five slots for both the physical and virtual incubator. RMI provides a host of services to its clients including both financial and legal counseling.

**Staff Perspective:**

Staff offers the following perspectives:

- There is a need for small business development services; it is part of the City’s Economic Development Strategic Plan and should not be eliminated.
- The provision of small business development services is better done “outside” the City government structure than it would be internally. This is because of the issues of confidentiality of business information, and the business community’s perception of the importance of that confidentiality.
- The current structure of the City/LCBD relationship is inherently problematic, causing potential conflicts for City Councilors and staff members alike who serve on the LCBD Board. Thus, staff will not continue to serve in voting Board positions once the current term expires. A more appropriate structure would be a Board with no voting City members, but a City staff liaison.
- While confidentiality is critical in small business development, accountability is likewise critical in expending public funds. To resolve this, a more detailed reporting requirement could be built into a services contract, and the City’s staff liaison could operate within a non-disclosure agreement (NDA) to be allowed access to otherwise-confidential information.
- Considering the magnitude of the \$80,000 funding request together with all other funding requests in the City budget, the City Manager will not recommend funding the \$80,000 in its entirety. Staff believes the City should have a more “arms-length” relationship with an external contractor. It is the responsibility of the external contractor to find additional sources of funding for expanded services, not the City only.

**Council Direction:**

Staff is seeking direction from Council with regard ongoing small business and entrepreneurial counseling to Loveland residents. The following questions to the Council build on the staff perspectives offered, and would provide direction for further action.

1. Does the Council continue to see value in the City providing this type of service to Loveland businesses?
2. Should the City continue to contract for outside services? Should it be contracted to an outside organization or should it be a direct service of the City?
3. If services continue to be provided by an outside organization, should the City have any Board seats – or rather a staff liaison requirement?
4. Should changes be made to the current contract to ensure accountability and flexibility with service delivery?
5. Should staff explore further other possible scenarios and costs for service delivery?
6. What funding level is the Council willing to pay for this service? Should the City contract require/encourage additional financial contributions from others besides the City?



**LOVELAND CENTER *for* BUSINESS DEVELOPMENT**

— Fostering Entrepreneurship, Innovation & Growth —

02 July 2012

Mr. Bill Cahill  
 City Manager, City of Loveland  
 500 East Third Street  
 Loveland, Colorado 80537

Mr. Cahill:

The Loveland Center For Business Development (LCBD) is requesting a total of \$210,200 in funding from the City of Loveland for the 2013 budget year. This would represent an \$80,000 increase over the current funding level of \$130,200. The increase in funding for LCBD services is necessary to provide sustainable business development services and education within the Loveland business and entrepreneurial communities.

Prior to 2008, the LCBD program consisted of a single employee working out of a single office at the Loveland Chamber of Commerce. In the years 2000 – 2007, the LCBD averaged 178 clients per year, 254 counseling sessions per year and offered no in-house training or workshops. Due to the continued growing economy during this time, the focus in demand for services from the Loveland business community was from Entrepreneurs looking to start businesses.

In 2008 the LCBD joined the Small Business Development Network (SBDC) as a satellite office with a total budget of \$130,200. Under the SBDC model, the LCBD began to remake its service delivery model. The LCBD developed and began providing in-house training and educational workshops and began to implement a Volunteer Trainer, Advisor, and Counsel program. The LCBD moved to a 4<sup>th</sup> Street location to increase program visibility and to serve better the changing needs of the business community. The new location provided addition space for a computer lab, a training room, and individual counseling rooms. The LCBD joining the SBDC network coincided with the beginning of the economic downturn in Colorado. The challenging economic conditions dramatically increased the demand for LCBD service and changed the nature of its client base. To manage the client growth as well as the program growth, a full time Program Coordinator was hired in 2009.

By 2011, when the LCBD left the SBDC network to return to a stand-alone organization, the LCBD program had grown to 48 volunteers, served 365 clients, provided 1,054 counseling sessions, provided 85 individual educational events, with a client mix that was 75% existing business owners and 25% Entrepreneurs / new business owners. In these growth years, the LCBD funding from the City of Loveland remained constant.

In 2012, the LCBD continues to see increased demand for services. The program continues to grow because each year the program continues to work with businesses from previous years as well as adding new clients. With the increased economic pressure on local businesses, the program is seeing the average hours per client rise. This is due to the complexity of the financial, debt, and working capital issues businesses are facing. Attached please find a graph that depicts the client and program growth.

Realizing that the current funding level of \$130,200 could not sustain the continued operation of the organization, in both 2011 and 2012, the LCBD took direct steps to increase program generated revenue. These initiatives included increases in class tuition, fees for additional client services, a client registration fee, as well as sponsorship and donations from community partners. However, in these challenging economic times, the LCBD is not able to meet completely its funding needs based solely on increased fees and donations.

With the funding that the LCBD receives from the City of Loveland, it provides direct client services that provide measurable economic impact in our community. In the years 2009 – 2012 to date, working with its clients, the LCBD has:

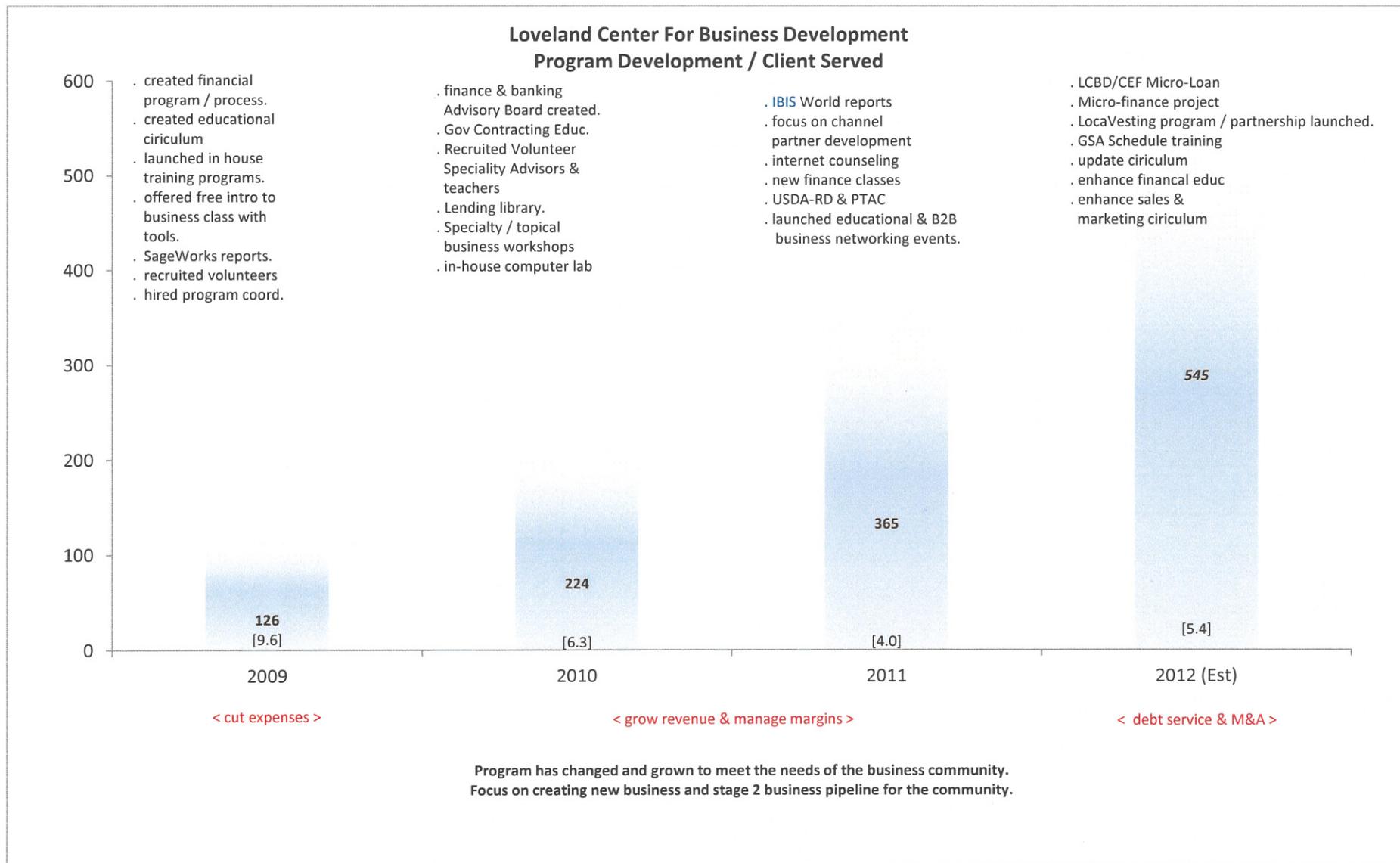
- 217 training & educational workshops attended by 1,336 participants
- 336 new jobs
- 135 new business
- \$8,171,900 in access to capital

The LCBD is requesting the additional \$80,000 in program funding to ensure the sustainability of the program and the continued economic impact that it facilitates in the Loveland business community.

Please let me know if there is any additional information that I can provide. I would also be happy to meet with you to make a more formal presentation / request if that would be helpful.

Regards,

Robin Shukle  
Executive Director – Loveland Center For Business Development  
441 East 4<sup>th</sup> Street, Suite 101A  
Loveland, Colorado 80537  
[www.LovelandCenterForBiz.Org](http://www.LovelandCenterForBiz.Org)  
[Robin@LovelandCenterForBiz.Org](mailto:Robin@LovelandCenterForBiz.Org)  
970.667.4106



- Number is bold (126, 224, etc.) are actual clients served.
- Number in brackets [9.6, 6.3, etc.] are the average numbers of hours of direct service per client. This does not include participation in training events, workshops, or networking events.

### Discussion regarding the Loveland Center for Business Development and an additional funding request for 2013

Discussion Item – Loveland City Council  
August 21, 2012

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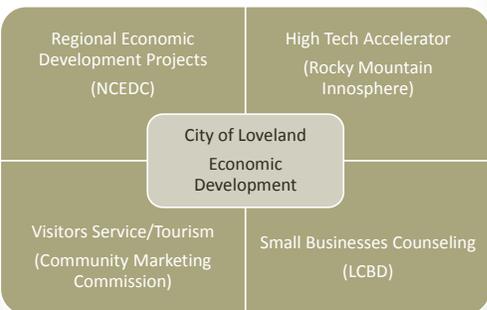
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### Purpose and Intent



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### Purpose and Intent

- How do we best deliver small business services “arms length transaction”
  - Look at all available options both public and private
  - Our interest is primarily with the provision of service not the organization
- Staff is interested in providing the highest level of service to the residents of Loveland at the lowest possible cost
  - Needs to be an outside service
  - Need for accountability and oversight
  - Sustainable funding plan/other partners

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## Duplication of Services

- Similar services are being provided by the Larimer County SBDC that are available to all Loveland residents (see staff memo)
- Services are substantially similar with all SBDC programs, including the LCBD.
- From the SBA website:

**Access to Capital (Business Financing)**

SBA provides small businesses with an array of financing for small businesses from the smallest needs in micro lending --- to substantial debt and equity investment capital (venture capital).

**Entrepreneurial Development (Education, Information, Technical Assistance & Training)**

SBA provides free individual face-to-face, and internet counseling for small businesses, and low-cost training to nascent entrepreneurs and established small businesses in over 1,800 locations throughout the United States and US territories.

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## Discussion Questions

1. Does the Council continue to see value in the City providing this type of service to Loveland businesses?

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## Discussion Questions

2. Should the City continue to contract for outside services? Should it be contracted to an outside organization or should it be a direct service of the City?

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### Discussion Questions

- 3. If services continue to be provided by an outside organization, should the City have any Board seats – or rather a staff liaison requirement?

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### Discussion Questions

- 4. Should changes be made to the current contract to ensure accountability and flexibility with service delivery?

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### Discussion Questions

- 5. Should staff explore further other possible scenarios and costs for servicedelivery?

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## Discussion Questions

6. What funding level is the Council willing to pay for this service? Should the City contract require/encourage additional financial contributions from others besides the City?

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**LCDB Comparative Financial Statements  
2007 through 2011 Actual; 2012 Budget**

	Actual 2007	Actual 2009*	Variance	Actual 2010	Variance	Actual 2011	Variance	Budget 2012	Variance
<b>Revenue</b>									
City Contribution	105,000	136,100	30%	130,100	-4%	130,100	0%	130,100	0%
Class Tuition	9,130	-	-100%	8,585	-	6,398	-25%	7,048	10%
Program Sponsorship	3,500	-	-100%	-	-	250	-	-	-100%
Colorado SBDC grant	-	-	-	997	-	1,142	15%	-	-100%
Interest Income	742	2,274	206%	1,595	-30%	756	-53%	73	-90%
Total Revenue	118,372	138,374	17%	141,277	2%	138,646	-2%	137,221	-1%
<b>Expenses</b>									
Salary	66,880	83,792	25%	84,688	1%	95,438	13%	105,000	10%
Benefits	20,046	24,849	24%	24,849	0%	26,341	6%	33,063	26%
Contract Labor	4,800	-	-100%	-	-	5,097	-	110	-98%
Payroll Taxes	4,785	-	-100%	-	-	8,139	-	8,030	-1%
Rent, Utilities	4,790	13,297	178%	20,976	58%	16,258	-22%	16,326	0%
Advertising	6,219	-	-100%	175	-	796	355%	-	-100%
Bank Fees	10	201	1910%	250	24%	264	6%	-	-100%
Benefits Administration Fees	-	7,020	-	7,020	0%	5,523	-21%	1,389	-75%
Charitable Donations	-	-	-	70	-	70	0%	45	-36%
Credit Card Processing Fees	-	-	-	-	-	-	-	455	-
Dues & Subscriptions	630	323	-49%	512	59%	59	-88%	-	-100%
Equipment Rental (Copy Machine)	-	295	-	2,348	696%	2,710	15%	2,515	-7%
FRCC Budgeted Expenses	-	9,942	-	-	-100%	-	-	-	-
FRCC Managerial Oversight & Support	-	7,090	-	7,090	0%	3,545	-50%	-	-100%
Insurance	2,472	1,226	-50%	370	-70%	2,325	528%	859	-63%
Maintenance / Cleaning	-	164	-	2,065	1159%	4,200	103%	3,065	-27%
Meeting Expense	435	268	-38%	897	235%	873	-3%	513	-41%
Mileage	-	-	-	-	-	821	-	667	-19%
Office Supplies	666	104	-84%	7,618	7241%	4,080	-46%	2,661	-35%
Other	419	209	-50%	-	-100%	4,299	-	6,785	58%
Postage	16	26	61%	53	100%	59	11%	54	-8%
Printing	1,676	-	-100%	-	-	115	-	-	-100%
Professional Fees (Legal & Accounting)	543	300	-45%	310	3%	395	27%	535	35%
Reference / Library Materials	-	-	-	183	-	73	-60%	493	576%
Repairs	-	-	-	277	-	-	-100%	88	-
Software	10	499	4890%	-	-100%	6,475	-	9,921	53%
Telephone & Internet	-	-	-	4,752	-	3,821	-20%	4,002	5%
Training	45	-	-100%	-	-	-	-	-	-
Travel & Entertainment	441	255	-42%	1,356	431%	704	-48%	157	-78%
Volunteer Appreciation	-	108	-	780	619%	340	-56%	299	-12%
Total Expenses	114,882	149,969	31%	166,639	11%	192,821	16%	197,031	2%
Net Revenue less Exp	3,490	(11,595)		(25,362)		(54,175)		(59,810)	

\* 2008 financial info is missing- variance is between 2007 and 2009

Total additional (non-rent) expenses incurred after move:

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Equipment Rental (Copy Machine)	2,348.25	2,710.00	2,515.43
Maintenance / Cleaning	2,065.00	4,200.20	3,065.00
Telephone & Internet	<u>4,752.31</u>	<u>3,821.12</u>	<u>4,001.84</u>
Total	11,175.56	10,731.32	11,594.27



# **LCBD Business Support Activity & 2013 Budget Request**

Robin Shukle  
Executive Director  
Loveland Center For Business Development

[www.LovelandCenterForBiz.Org](http://www.LovelandCenterForBiz.Org)



# Presentation Goals

## The goals of this presentation are to:

1. Address the issues / concerns about the LCBD and our current financial position.
2. Present the objective value the program provides the Loveland small business community and the City of Loveland.
3. Answer any/all questions.



# Presentation Supplemental Material

**The supplemental material includes:**

- **LCBD 2012 Mission, Vision & Strategy**
- **LCBD Program History & SBDC Experience**
- **Program Differences With The Larimer SBDC**
- **The LCBD Process**
- **LCBD Client Testimonials**
- **LCBD Partner Testimonials**



# Setting The Record Straight

In direct response to the questions circulating:

- No request for additional funds in 2012.
- The plan for meeting the 2012 budget needs.
- 2008 - the last request for budget increase.
- The LCBD vs. SBDC.
- The absolute need for confidentiality.
- Plan B-E for various levels of program funding.



# Program Overview

- Organization created 1990.
- Mission based non-profit.
- Experience as an SBDC Satellite Office.
- The role of the organization - business development.

*<Detailed program history provided in the Supplement 1.>*  
*<Detailed mission, vision & strategy provided in Supplement 2.>*



# Why Does Loveland Need Development Services?

## **Entrepreneurial Reality:**

Very few entrepreneurs start businesses to do their own accounting, finance, and other back office administrative functions.

## **Business Reality:**

The bottom line in business ownership is the bottom line: profitability and liquidity. If the business owner is not managing these - who is?? And who does the business owner turn to if they need assistance or a trusted advisor?

## **Economic Reality:**

A rising tide floats all boats. The current economic conditions have created a very challenging economic climate – especially as it relates to access to capital. Conversely, an economic downturn provides ideal conditions for starting or growing a business.



# Our Regional Business Development Partners

- **Larimer Small Business Development Center**

*“I believe that all of us know that each organization, SBDC and LCBD, offers services differently and complements each other’s strengths.” Kris Binard*

- **Loveland Small Business Development Network (LBAN)**
- **Local and Regional Banking / Finance Partners**
- **Regional Program Partners – USDA & PTAC**

*<Detailed program comparison provided in Supplement 3.>*



# Program Accomplishments

	<u># Clients</u>	<u># Sessions</u>	<u>Jobs</u>	<u>Capital / Loans</u>
2009	126	490	82	\$ 110,000
2010	224	844	96	\$2,885,100
2011	365	1,054	125	\$4,320,000
<hr/>				
2012 (est)	545	1,453	145	\$3,000,000

<Detailed explanation of program process and reporting in Supplement 4.>



# LCBD Value Add

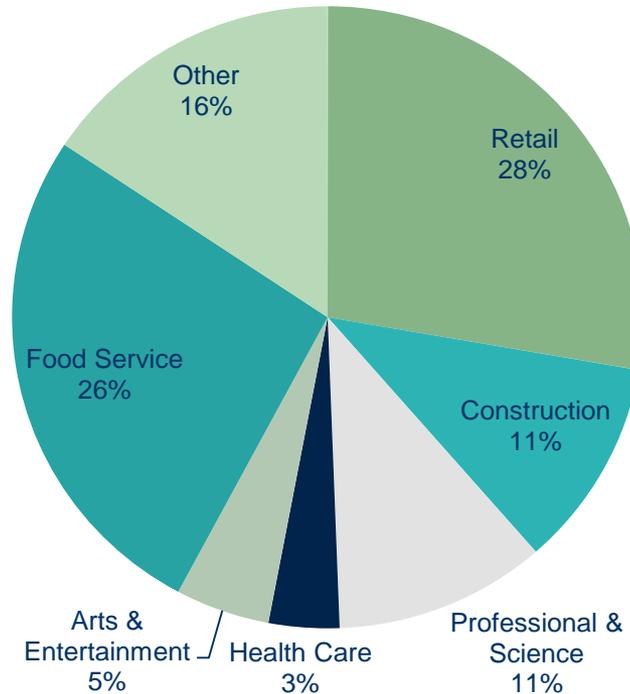
- **Jobs**
- **Loveland City Sales Tax Revenue**
- **Access to capital to fuel business inception and growth.**



# Impact: Jobs Created & Maintained

	<u># Clients</u>	<u># Sessions</u>	<u>Jobs</u>	<u>Capital</u>
2011	365	1,054	<b>125</b>	\$4,320,000

2011 Actuals For a 6 month period: 83 jobs created or maintained





# Impact: Capital Formation

	<u># Clients</u>	<u># Sessions</u>	<u>Jobs</u>	<u>Capital</u>
2011	365	1,054	125	<b>\$4,320,000</b>

2011 Actuals For A Six Month Period: \$2,895,000

Durable Goods	\$ 978,000	33.8%	equipment, inventory
Start-Up Services	\$ 192,000	6.6%	social media, IP, legal
Business Purchase	\$1,725,000	59.6%	



# Impact: City Sales Tax Paid

	<u># Clients</u>	<u># Sessions</u>	<u>Jobs</u>	<u>Capital</u>
2011	365	1,054	125	\$4,320,000

Client Report City Sales Tax (3%): Sample set of 12 LCBD Clients

	2011	2012 1-2Q	2012 Budget
6 – collected sales tax	\$94,703	\$80,775	\$161,551

Of the 6 businesses: 2 turn around plans  
 3 new businesses  
 1 business purchase

Sample Set of 12 LCBD Clients represents **3%** of clients served in 2011.  
 Data collected by a third party Volunteer.



# Summary of Impact

	<b>2011</b>	<b>2012 Act + Est</b>
Jobs:	125	145
Sales Tax*:	\$ 94,703	\$161,551
LCBD Facilitated	\$ 59,980	\$130,000
B2B Sales:		

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# Impact: What LCBD Clients Have To Say

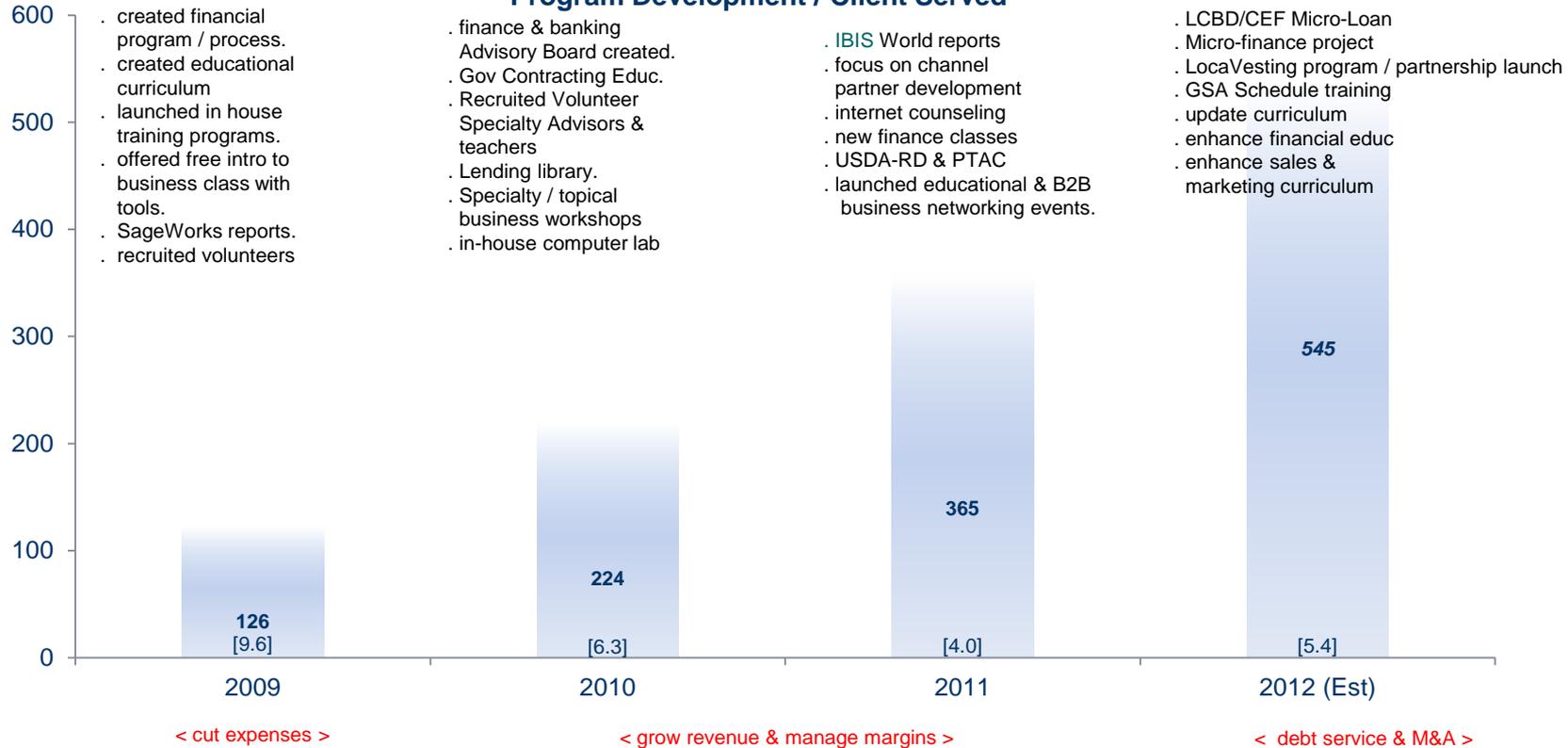
The testimonials were collected by a 3<sup>rd</sup> party Volunteer.

*<Detailed client testimonials provided in Supplement 5.>*



# What Does Program Innovation Look Like?

**Loveland Center For Business Development  
Program Development / Client Served**



**Program has changed and grown to meet the needs of the business community. Focus on creating new business and stage 2 business pipeline for the community.**



# The Additional \$80,000 Pays For ....

The continuation of a program that provides a triple bottom line:

- is cost effective, providing a return on investment for the City.
- provides increasing levels of annual sales tax for the City.
- creates and maintains jobs.
- enables innovative programming to meet the current business needs and economic conditions.
- creates a pipeline of potential Stage 2 and primary businesses.

**A program that is Loveland, for Loveland, and is dedicated to making Loveland businesses and business owners successful.**



# Questions



## LCBD Program History

### Background:

The Loveland Center for Business Development, Inc was established in 1990 as a three-way partnership between the City of Loveland, the Loveland Chamber of Commerce, and the Loveland Economic Development Council.\* The Center was a non-profit corporation funded by the City of Loveland that received substantial in-kind support from the Loveland Economic Development Council.

The Center's purpose was to provide a no cost counseling service to the people of Loveland that were seeking assistance in establishing or expanding a local business. As clarified in the LCBD 2000 Annual Report:

*“For many (clients) it is as simple as helping to organize and prioritize the necessary steps in becoming a legitimate business entity. The more in-depth cases require assistance in developing a business and marketing plan, preparing cash flow projections, and selecting a banking relationship, especially when it is necessary to acquire financing.*

*The businesses needs requested (by clients) include finance & accounting, marketing, insurance, legal, and banking. In addition to the expertise of the Center's counselor, the clients are assisted by a network of local business professionals that volunteer time to assist clients with special needs in their areas of expertise”.*

The Center was staffed with one employee, the Executive Director, and provided services five days a week at the LCBD Office. The Center provided educational offerings in partnership with the Loveland Chamber of Commerce and the Larimer Small Business Development Center.

The LCBD operated as an independent business development organization from 1990 until September 2008.

### Joining The Small Business Development Center (SBDC) Network:

In August 2008, codified in a Memo of Understanding (MOU) between the LCBD Board of Directors and Front Range Community College (FRCC), the LCBD joined the Colorado State SBDC Network as a satellite office of the Larimer-SBDC.

\* Source: 2000 LCBD Annual Report

The terms of the original agreement, as outlined in the MOU, stipulated:

- A three (3) year pilot program beginning 01 September 2008 and ending 30 June 2011.
- An annual program cost to be paid by LCBD:
  - 2009 \$117,000
  - 2010 \$129,150
  - 2011 \$132,320 (annualized 6 month budget of \$66,160)
- Loveland Associate SBDC-Director became employee of FRCC.
- Part-time administrative help provided by the Larimer SBDC Office.

The Colorado State SBDC Office contributed an initial start-up grant of \$15,000 in 2008, but did not contribute any monetary resources to the on-going operation of the office throughout the period of the MOU.

In November 2009, the original MOU was renegotiated with FRCC. After 12 months of operation, the actual program costs were lower than the original budget as outlined in the MOU. The result of the renegotiation was a decrease in LCBD program cost. Specifically:

- 2009 \$117,000
- 2010 \$ 79,150
- 2011 \$106,000 (annualized 6 month budget of \$53,000)

The renegotiated MOU saved the LCBD \$63,150. These savings were amassed in the program operating reserves. Due to the renegotiated MOU and the LCBD operating reserves, no additional funding was requested of the City of Loveland from 2008 to 2012.

### **The LCBD Experience As A Satellite SBDC Office.**

The alignment with the Colorado SBDC Network enabled tremendous program growth and opportunity. The Loveland SBDC office had access to the policies, procedures, and best practices of a national accredited program. The highlights of the program changes include, but are not limited to:

- The implementation of a client confidentiality policy and confidentiality document.
- The implementation of a CRM (client relationship management) software tool, CenterIC, developed specifically for business development / economic development organizations.
- The development of objective program goals and reporting requirements.
- The standardization of client files and the documentation of every client interaction – whether for training or one-on-one counseling.
- The development of an in-house training program.
- The use of in-house volunteer counselors.

In each of the three (3) years that the Loveland SBDC office was a satellite of the Larimer SBDC office, the Loveland program outperformed the Larimer County SBDC program.

To validate the accuracy of the Loveland program numbers reported in CenterIC, the State SBDC office audited the electronic program data. The state office reviewed each and every counseling session completed by the Assistant Director, and the subsequent details provided on that session, for accuracy and conformance to standard. The Loveland-SBDC office passed the audit.

## **The Decision Not To Renew The SBDC MOU:**

In early 2011 the LCBD Board of Directors initiated a program review prior to the renewal of the MOU on 30 June 2011. The Board tasked the program Director with completing program analysis and alternatives. The Board also met with the Colorado State SBDC Director, Kelly Manning, and the FRCC Program Administrator, Kris Binard.

After careful review, and by a unanimous vote, the LCBD Board decided not to renew the SBDC MOU and return the LCBD to a free-standing program. Consideration for this decision included:

- No on-going funding available from the State SBDC Office.
- A request by State SBDC for limited oversight of the local board.
- A State SBDC requirement that the Loveland program:
  - Reduce the number of workshops taught by the Director
  - Reduce the amount of prep time the Director invested prior to a counseling appointment
  - Cease all internet based counseling
- Encourage all start-up businesses and business expansion efforts.

The SBDC requested program changes spoke to a difference in operating philosophy. The Colorado SBDC, in order to substantiate and increase its Federal funding from the SBA, placed emphasis on clients served and hours of service received in one-on-one counseling sessions. The LCBD program puts emphasis on client education / skill development and actual and objective economic impact achieved.

## **The LCBD Program Today:**

Driven solely by client demand for services, the current LCBD program is comprised of two employees, an Executive Director and a Program Coordinator.

In 2009 the program outgrew its single office, subsidized by the Loveland Chamber of Commerce, and moved to an independent and stand-alone office suite on 4<sup>th</sup> Street. The need for more space was driven by:

- the need for simultaneous counseling offices to meet service demand
- a computer lab to provide hands-on automated accounting software training
- an in-house training facility
- the desire to be visible and directly participate in the renewal of 4<sup>th</sup> street

In 2011, upon leaving the SBDC Network, the LCBD purchased operating licenses to continue the use of the CenterIC – the customer relationship management (CRM) and reporting tool.

## **The Role of The LCBD:**

The LCBD provides business development services. These services are very different from traditional economic development. Whereas:

### **Business Development:**

Comprised of associated tasks and processes that are often indiscernible from traditional management and marketing approaches, such as strategic management, marketing management, sales and marketing, and entrepreneurship. The business developers' tools to address the business development tasks are business modeling answering "how do we make money" (financial analysis) and its analytical backup and roadmap for implementation (the business plan).

### **Economic Development:**

Refers to the sustained, concerted actions of policymakers and communities that promote the standard of living and economic health of a specific area. The scope of economic development includes the process and policies by which a community improves the economic, political, and social well-being of its people.



# LOVELAND CENTER *for* BUSINESS DEVELOPMENT

— Fostering Entrepreneurship, Innovation & Growth —

**Vision:** To facilitate the development of Loveland’s business community as Northern Colorado’s epicenter for entrepreneurial excellence and innovation.

**Mission:** To create on-going mentoring relationships with business owners by providing confidential, independent, objective, and impartial business assessments based on actual and relevant business experience and available throughout the entire business cycle.

### Client Focused Service Provision:

1. Facilitate business development in Loveland.
  - a. Retain and grow businesses.
  - b. Assist in creating and retaining jobs.
  - c. Increase access to capital.
  - d. Promote a diversified economic base.
  - e. Support a strong and independent business-friendly network.
2. Create on-going mentoring relationships with business owners by providing confidential, independent, objective, and impartial business assessments based on actual and relevant business experience and available throughout the entire business cycle.
3. Provide client business services including B2B networking events, referrals, financial tools and templates, channel partner development services, business industry and financial reports, etc.
4. Provide relevant educational, training, and counseling services.
5. Champion, cultivate, and demonstrate innovation, entrepreneurship, and business best practices.
6. Partner with local, city, state and federal agencies to provide timely and accurate access to information and to ensure that the LCBD is not duplicating services already available in Loveland or in Northern Colorado.

### 2012 Strategic Imperatives:

1. LCBD Budget
  - a. Generate Additional Program Income
  - b. Fundraise
2. Manage Increased Client Demand For Services
  - a. Align LCBD resources with greatest return on program investment.
  - b. Invest in on-going program and curriculum development.
  - c. Manage client demand for services through scheduling.



### **Program Differences Between The LCBD and the Larimer SBDC**

While the purpose of both programs is business development, through the provision of training and consulting / counseling services for business owners in Northern Colorado, the two programs differ significantly on their scope and approach:

#### **LCBD Mission & Vision:**

**Vision:** To facilitate the development of Loveland's business community as Northern Colorado's epicenter for entrepreneurial excellence and innovation.

**Mission:** To create on-going mentoring relationships with business owners by providing confidential, independent, objective, and impartial business assessments based on actual and relevant business experience and available throughout the entire business cycle.

#### **Larimer SBDC Mission:**

**Vision:** To be the number 1 business resource for entrepreneurship in Larimer County.

**Mission:** To help business start, grow, and prosper in Colorado.

Consistent with the differences in mission, The LCBD focuses its educational offerings on detailed financial management and top-line revenue generation workshops. The SBDC teaches at a higher level and across broader ranges of business topics.

**LCBD Training Opportunities:** Upcoming training events as posted on the LCBD web site:

- So You Want To Start A Business
- Cash Is King: Cashflow Basics\*
- Finding Your Market Niche\*
- Creating A Great Business Plan\*
- Are Your Sales Tactics Working?
- Getting The Most Out of Your Social Media
- Discover The Marketing Power of Repurposing Your Business
- Strategic Branding
- Revisiting Your Marketing Strategy. Do You Have A Plan??
- It's Not The Website: Place Your Chips In The Right Corner
- Grow Your Business Through Facebook
- Selling To the Federal Government
- The New Information Requirements: What You Need To Know
- Financial Statement Nuts & Bolts\*
- Hand-On Quick Books\*
- Record Keeping Realities\*
- Networking Event\*

**SBDC Training Opportunities:** Upcoming training events as posted on the SBDC web site:

- Accepting Credit Cards
- Make It Official – Entity Selection
- So You Want To Start A Business (curriculum developed by the LCBD)
- Hire Right The First Time
- Minimize Your Tax Burden
- Social Media – A Starting Point
- Social Media – Beyond The Basics
- Business Planning for Success
- Will My Business Make Money
- How To Do Business With The Government
- Web analytics For Business
- Small Business Marketing
- Selling Your Uniqueness
- Relationship Selling
- Building Effective Web Sites

As Loveland residents can attend training classes at the Fort Collins SBDC, the difference in educational offerings and scope provides them with twice the educational opportunities in Northern Colorado.

### **One-on- One Counseling / Consulting Services:**

Both the LCBD and the SBDC programs offer direct client services provided by the Program Director. However the SBDC pays consultants to provide additional consulting services while the LCBD makes use of volunteer (unpaid) counselors. Both organizations provide services on a scheduled basis only.

While both organizations provide consulting / counseling services, the philosophy behind their provision and outcome differ. Specifically:

- **Ad hoc vs. process based. “Give a fish vs. tech to fish.”**

The LCBD has a client services process that integrates very specific program offerings with hands-on, one-on-one mentoring services. Within the process are well defined client deliverables know to the LCBD clients as homework.

A detailed discussion of the LCBD process is contained in Supplement 4 – the LCBD Process.

The SBDC schedules counselors to work with clients on an appointment basis. Typically there is no prep or planning for most appointments. The client questions and concerns are answered / addressed during the consulting session.

- **Start / grow a business vs. prevent failure. “Fail early and fail fast on paper.”**

*According to Dunn & Bradstreet, 90% of businesses close because the business was not successful, did not provide the required level of income, or was too much work.*

With a vision of entrepreneurial excellence in Northern Colorado, the focus of the LCBD is to educate and mentor business owners. To do this, the LCBD process motto is to fail early and fail fast on paper. Specifically, to understand the industry, financial, and personal components of business success (as defined by the business owner / entrepreneur) and achieve them first on paper – then, in the competitive marketplace.

The LCBD recognizes that its mission is as much to enable business success as to prevent business failure. As such, an entrepreneur who, after working through the LCBD process, decides not to open a business is as much a program success as the entrepreneur who decides to open a business.

The focus on business success is maintained throughout the LCBD client process through the use of a cashflow statement. From beginning to end, the financials are the key process deliverable.

The SBDC provides consulting services to help business start, grow and prosper.

- **Advisor vs. active partner in business and revenue generation.**

At the LCBD we strive to assist our clients in achieving a cashflow positive status in six (6) months. To do this, the LCBD:

- Manage facilitated networking events whereby new entrepreneurs and existing business owners can develop and practice their USP's.
  - In 2011, LCBD clients reported a total of \$58,980 in actual business attributed to contacts made at an LCBD networking event.
- Develop and make channel partner introduction in the local Loveland business community.
- Use the LCBD FaceBook Fan Page to spotlight and highlight LCBD client businesses.

Other than direct client counseling and educational offerings, the SBDC does not get directly involved in client marketing, advertising, channel partner development, and/or networking.

So while the service offerings of education and consulting / counseling may appear to be similar in nature, the LCBD is an active partner in on-going business growth.

# LCBD LOVELAND CENTER for BUSINESS DEVELOPMENT

— Fostering Entrepreneurship, Innovation & Growth —

## The LCBD Process: How We Do What We Do

Why is this important?? Because the process that we use at the LCBD is what enabled a **290%** growth in number of clients serviced over a three year period with no increase in staff .

Why is this important? Because the process was designed to be transparent and auditable. Designed into the process are discrete points of independent validation and verification (IV&V).

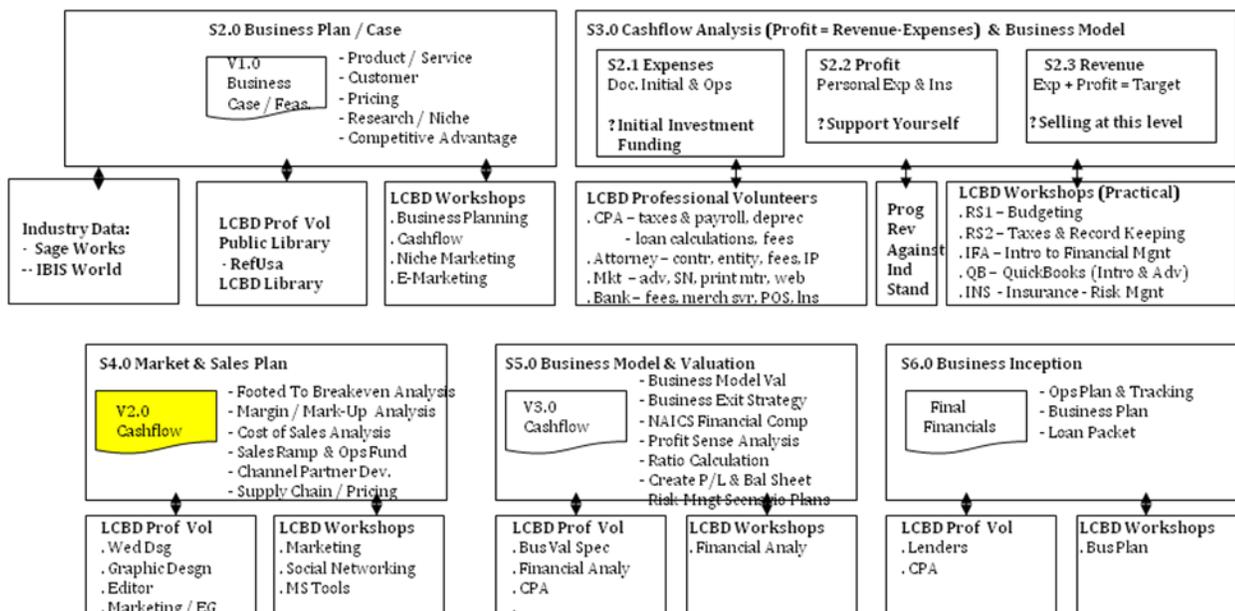
The foundation of the LCBD program was built on the experience as a satellite office in the SBDC program. Upon returning to a stand-alone business development organization, the LCBD voluntarily continued the policies, procedures, and best practices of the nationally accredited SBDC Network.

The LCBD then took the SBDC foundation a step farther by creating a TQM (total quality management) process model. The motto of the LCBD, as stated in the words of a pioneer in the quality field, is:

*“You cannot manage what you cannot measure”. W. Edwards Deming*

### The Process Model:

The process used at the LCBD for both entrepreneurs as well as existing business owners is as follows:



The key process areas (KPA's) in the client workflow process are:

- the use of objective third party industry (IBIS World) and financial (SageWorks) data to begin the business exploration, turn-around, or growth challenge to be addressed.
- the use of cashflow analysis as the document that provides process continuity and measurement.
- the use of specific educational offerings to supplement the counseling process.
- the use of the LCBD Library reference / resource material.

### **How Does The Client Process Begin:**

Prospective clients often find the LCBD web site through an internet based search. However, most of our clients come from referrals – either from one of the LCBD Banking / Financial partners, or through an exiting client of the LCBD.

The process begins when the client either calls the LCBD office, registers for services on-line at the LCBD web site, or comes to the LCBD office. In all cases, the LCBD Program Coordinator contacts the prospective client to understand what their specific needs are. Having vetted the client need, the Program Coordinator makes a recommendation: Specifically:

- If the prospective client has never owned a business, the Program Coordinator explains that the prerequisite for services in attendance in the So You Want To Start A Business Class.
- If the prospective client is an existing business owner, the Program Coordinator seeks to understand not only the nature of the business but of the specific counseling needs, and assigns / partners the client to the counselor with the best industry & skill fit.
- If the prospective client is looking for specific business information, the Program Coordinator will refer them to the requisite organization.

The Program Coordinator instructs prospective clients to register as an LCBD client on-line. The on-line client registration process is integrated into the LCBD client relationship management (CRM) software package – CenterIC. Information reported about a business is entered by the entrepreneur / business owner. This information includes:

CenterIC Customers Events Staff Reports Center EX Help | Sign Out

Mary Ann Huffines Loveland (10) 201

Customer Sessions/Events Categories/Related Library

Prefix First Name Last Name Email Dashboard... Office Use Entered by [Customer] on 7/19/11 6:34 PM Last Edit by M A Huffines on 7/19/11 6:37 PM

Mary Ann Huffines maryann@lovelandcenterforbiz.com Edit Save Merge... Delete Print RFC Download Send Link Copy User: Set...

Position/Title Primary Phone (970) 667-4106 Work Lead Counselor Robin Shea Set... No Email No Mailings No Public Release SBA Impact Survey Release Date of Birth

Business Name Secondary Phone Home Other Phone Mobile Business Fax Web Site Go

Address Copy Address 441 E. 4th Street City US State Zip Zip + 4 Loveland CO 80537 County: Larimer District: 0 Edit... Lookup...

Customer Information Asian Native American/Alaska Native White Hispanic Ethnicity No Gender Female Veteran Non-Veteran Black Native Hawaiian/Pacific Islander No Race Response Person with Disability No Military Status Not Military

Business Information Business Description Status Not yet in Business Business Type (select) Business Online Home Based Business 8(a) Certified SBA Borrower SBA Applicant Surety Bonded COC Holder Import/Exporter MBE Certified Certified HubZone Not a Small Business Federal SDB Service Disabled Vet Misc 9 Misc 10 Contracting Potential NAICS SIC 0 DUNS 0

Choose Lead Representative... No Members

Customer Notes Spell Check

Once registered in the LCBD CRM system, the client's counseling and training services are uniformly documented in the system. A sample electronic client record might look like:

CenterIC Customers Events Staff Reports Center EX Help | Sign Out

Mary Ann Huffines Loveland (10) 201 Today

Add Session Show: All Sessions Events Refresh Bottom

Date/Action	Area	Hours	User	Program	Misc.	Bus Status	Notes
Internet eRFC 7/19/11 6:34 PM 0			[Customer] (Loveland)	CBD		Not yet in Business	Assistance Sought: Specific Assistance: Need help to develop a Chatty Cathy business From IP: 65.100.189.240 Acceptance: Mary Ann Huffines
Initial 8/13/12 2:00 PM	100	1 Contact 0.5 Prep	Robin Shea (Loveland)	CBD	LCBD Office	Not yet in Business	Prep: LCBD Director researched applicable NAICS code and printed and reviewed IBIS World Industry Report, IBIS World Healthy Eating Index, and SageWorks Industry Financial Report. More...
Event 9/5/12		2.5 hr		CBD	No Fee		Event: So You Want to Start a Business
Appointment 9/13/12 1:45 PM Pending			Robin Shea (Loveland)	CBD		Not yet in Business	
Total Sessions: 3 Total Hours: 4		Contact: 1 Prep: 0.5 Event: 2.5					Top

Center IC © 2001-12, Center Dynamics USA, LLC v2.11.8.2012.5.10 r.12.7.25

A registered client must schedule a counseling appointment at the LCBD through the Program Coordinator. The Program Coordinator keeps a manual schedule / record of client appointments. Once an appointment has been confirmed, the Program Coordinator creates a counseling appointment in the CRM system. The CRM system automatically sends appointment reminder emails to the client.

When the client arrives for the first counseling session, the Program Coordinator has the client review and sign the LCBD confidentially statement.

The screenshot displays the CenterIC CRM interface for a counseling session. The main header shows the client name 'Mary Ann Huffines' and the location 'Loveland (10) 201'. The session is titled 'Initial Detail (Counseling)' and was entered on 8/13/12 at 5:27 PM. The session details table shows a date of 8/13/2012 at 2:00 PM in Area 100, with 1 contact, 0.5 prep hours, and 0 travel miles. The program is 'CBD' and the contact type is 'Office'. The site is 'LCBD Office'. The status is 'Not yet in Business'. The notes section contains a detailed description of the business and owners, an analysis of the critical problem, recommendations and actions taken, and next steps.

Date	Time	Area	Contact	Prep	Travel	Miles	Staff ID...
8/13/2012	2:00 PM	100	1	0.5	0		Robin Shea

Program: CBD, Sub-Program: (select), Contact Type: Office, Language: (select), Attendees: 1

Site: LCBD Office, Referral From: , Referral To:

On the Date of this Session:  
 Status: Not yet in Business

Verified (requires Verify Session permission)

Notes: Spell Check Guidelines

**BRIEF DESCRIPTION OF THE BUSINESS AND/OR OWNERS:**  
 Service or product/Short history/Others involved/Special Circumstances/Timeline

**AN ANALYSIS OF THE CRITICAL PROBLEM:**  
 Assistance requested/Questions answered/identification of other problems to be considered/red flags/ideas brainstormed/resources identified

**RECOMMENDATIONS AND ACTIONS TO BE TAKEN:**  
 Directions given/warnings or cautions/quick lessons taught/resources revealed/ideas floated/websites visited/forms reviewed/referrals to agencies

**NEXT STEPS & FOLLOW-UP ACTIONS:**  
 What specifically the client will do and what will the counselor do/Classes enrolled, books checked out, other advisors sought/Websites to visit/Research to do/materials to send/agency contacts to make/materials filed/prep work for next meeting

- . opportunities to gain visibility and build a following in the community (demand) before the business opens
- . the need to diversify the top line revenue stream - adding a low cost / high margin item and the consideration of commercial / wholesale sales

**RECOMMENDATIONS:** The LCBD Director recommended that the Entrepreneur:

- . complete cashflow analysis V2.0
- . complete actual COGS calculations, using LoCo pricing, on all sale items

**NEXT STEPS:** Return to the LCBD for financial review.

Every client counseling session or email interaction is documented by the counselor using the following standard:

PREP WORK:  
 BRIEF DESCRIPTION:  
 ISSUES DISCUSSED:  
 RECOMMENDATIONS:  
 NEXT STEPS:

Each record also contains:

- Date of counseling session
- Time of counseling session
- Topic area of counseling session
- Contact time spent with client during counseling session
- Prep / review time invested by counselor prior to client session
- Counselor name
- Type of client contact ( phone, email, in person, etc.)

Using the Report Writer function in the CRM tool, the program performance is reported using the electronic data. A manual client file is also maintained with hard copies of all of the electronic forms and reports.

**The LCBD Client Mix:**

The LCBD provides services to Loveland business owners and Loveland residents. The actual 2011 industry mix, as reported using the LCBD CRM, was:

- Retail 19.7%
- Agriculture 1.8%
- Construction 3.1% 75% in business
- Manufacturing 1.8% 25% entrepreneurs
- Finance & Insurance 1.8%
- Professional & Scientific 10.1%
- Health Care 5.7%
- Arts & Entertainment 4.4%
- Food Service 7.0%
- Education 2.2%
- Other 10.1%

**How Do We Know That The Program Works:**

**Training Effectiveness:**

As a component of each training workshop, participants are required to complete an evaluation comprised of nine questions (see attached). The participants are asked to rate the training using a 10 (highest) to 1 (lowest) scale.

Selecting two LCBD courses and tabulating the evaluation results for each participation that attended the selected class in 2011, found:

	#2 how likely to use knowledge	#3 how likely to return to another training event	#4 how likely to return for counseling	#5 how likely to refer other businesses to LCBD
Into To Business (So You Want To Start A Business)	9.7	9.5	9.4	9.8
Business Planning	9.9	9.8	10.0	9.8

### **Counseling Effectiveness:**

For direct client counseling services, using the LCBD CRM system, the reporting function quantified the average number of client counseling hours per client.

	2009	2010	2011	2012 YTD
Average Hours Of Service Per Client	9.6	6.3	4.0	5.4

Our clients come back for service – despite the homework assigned.

The demand for client service is also driven by that fact that business owners return to the LCBD year after year. For all clients seen at the LCBD between 01 January and 30 June 2010, the year that the client first sought services at the LCBD was:

2012	54%
2011	40%
2010	19%
2009	4%
2008	2%

So in 2012, the LCBD is working with clients from 2008, 2009, and 2010. This is a clear indication that LCBD clients are finding value in the services provided by the program. It also reinforces that the innovate programming done at the LCBD offers something new to existing clients.



## The LCBD Client Testimonials

### **Phil Bearly: Ultramech, LLC**

Impact: New business start, 1 job created, manufacturing orders in Colorado

“The Loveland Center for Business Development was initially contacted as a source for setting up a new family-owned and operated business that could be passed on to my sons. They were able to answer all questions about set-up, contracting, pricing, marketing, bookkeeping, and networking. Through continued inquiry, the LCBD has maintained answering each and every question that is posed to them from my sons and me. Though we have not created any new jobs yet, we, as a family, we have and will to continue to use northern Colorado manufacturing companies to create our parts, which will lead to more jobs in Colorado. Our ultimate goal is to have our machinery made in American with all American-made parts.”

### **Jeff Meadows: Mrs. Goodthrift**

Impact: New business start, 18 jobs created, new sales tax source

“The Loveland Center for Business Development helped my wife and I start up a new business in 2011 by providing resources to read and study as well as classes to participate in. We absolutely would not be in business if it were not for the LCBD’s guidance in everything we have done from the location of our store to the people we employ. We have sixteen employees at the present time and will have up to twenty by the end of the summer. Plans for two new locations are in the works. Some of the employees are Work Force Center employees who came to learn skills and are now taking home a paycheck. We also employ disabled / disadvantaged people and give training to them to help in their job development. This business has a positive effect in Loveland by reducing land fill materials, helping folks with furnishing their houses, and employing local people and volunteers. We would not be here if it were not for Robin and the Loveland Center for Business Development. Our revenue growth expectations are far higher than what we all forecast when we first went to Robin”.

### **Robert Brown: Sports Clips**

Impact: New business start, 8 new jobs (projected), new sales tax source, business attraction, community integration

“When I was looking for a community to move to and start a business, I knew I wanted to be in Colorado. I started looking into economic development and found the Loveland Center for Business Development. When I went to the LCBD, Robin took immediate interest in what we proposed and how to connect with people in Loveland who might help us since we were moving from Louisiana and didn’t know anyone. We attended networking events where we were introduced to bankers, real estate agents, and others who would be able to get our franchise business off the ground. We have purchased three franchise licenses and will employ eight to ten people at each location. We will be contributing to the growth and development of the Loveland area and want to thank the LCBD for its help. We will be continuing education and contacts as we move within the next month. The first store is scheduled to open in September.”

**Abner Brantley: Buckhorn Heating and Cooling**

**Impact:** Existing business sale, 2 jobs maintained, 2 jobs created, community integration

“Looking at the internet for someone to help me with purchasing a business and moving to Loveland, I located, contacted, and got together with Robin at the Loveland Center for Business Development. She helped me to connect to the previous owner so that we could purchase the business from him. The business continues to grow connecting to bankers, contractors, and homeowners who need our services. We are increasing our contacts because of the LCBD. We have hired two employees and will need to hire more employees with the demand for services. Though our demands vary with the weather, we project to need more help as the business grows. We relied on the LCBD for connections with the people who could help us and have gained directly from those contacts that the LCBS provides us with. We will need to get more active in marketing with the LCBD’s help.”

**Christina DiGiallonardo: DOGS (Dogs Owners General Store)**

**Impact:** Business turn around, 2 jobs saved, 3 jobs created, increased sales tax source

“I was ready to shut down my business when I tried going to the SBDC. I quickly found that I could get services of much better quality from the Loveland Center for Business Development. I started working with the LCBD and took every class I could learning how to grow my business, how to negotiate for things that the landlord should take care of like my new roof, how to select health care services for myself and others, and how to find an affordable accountant. I send every new business owner that I come in contact with, whether they are from Greeley, Ft. Collins or wherever, to the LCBD. They not only provide services in their office with classes and counseling services, but also provide volunteers in the store. One of the volunteers helped me lay things out in the store for display purposes and showed me marketing tools to use. My business has grown so much in the three years that we have been opened that I quit my primary job two weeks ago giving me more energy and time to work in the store. I presently employ three people but, because of the small size of the building, will probably not be able to have more than four to five employees. If it were not for Robin and the LCBD, I would not be in business today.”

**Randy Hammock: e3signs**

**Impact:** New business start, 4 new jobs, new sales tax source, business attraction, community integration

“I came to the Loveland Center for Business Development was moving away from its affiliation from the SBDC. I found a class I wanted to take on my day-off and that was what hooked me. I saw the services and commitment that the LCBD gave and knew I wanted to work with Robin. That was in December of 2010. Today, my business continues to grow and I employ three people. The biggest benefit to me of the LCBD beside their constant words of advice has been in the networking events. I have participated and hosted networking since opening my business. Even if a network connection did not use me for services, they passed on the business name to others who might benefit from it. I have tried other marketing techniques but word-of-mouth is by far the best. Another benefit has been in growth—I have grown the business from 2010 to 2012 over 100%. Cash flow is beginning to be easier and the monthly cash on hand has increased so that bills can be paid on time without me worrying.. My customer base is increasing 95% each year with the ultimate goal to hire more people.”

**Linda Joy Lemke: Linda Joy Voice Overs**

**Impact:** Business retention

“Without the counseling services and support from the Loveland LCBD, I would not have been able to secure a loan to finish building up my business (studio). My children and I have been able to stay and live in this wonderful community, while I 'commute' to work by connecting via Ethernet with clients all over the world from my voice recording studio here in town.”

### **Stephanie Stauder: Anthology Books**

Impact: Business turn-around, 8 jobs retained, 7 jobs created, additional sales tax on new business line

”The Loveland Center for Business Development has helped me breathe new life into my business plan. Robin helped me to articulate the needs and desires that we were striving for and to act on them. From the weekly sessions that we have, I have not only been super charged by Robin’s energy and enthusiasm, but have gotten help with market research, the demographics of my clients, how to open my own coffee shop, and how to locate partners for the financing. I am presently working on gaining partners in financing and have no doubt that I will locate them. Business projections for growth are strong and reasonable—I am projecting a 3% growth in book sales and 3% growth in the café/coffee shop. I have just doubled my staff from seven employees to fourteen and have plans for more in the near future. My number one recommendation to acquaintances and friends interested in opening their own business is to go to Robin---she will become your ‘first line resource for that business idea’”.

### **Debbie Gutierrez: Bark Park, LLC**

Impact: New business start, 4 new jobs (projected), new sales tax source, community integration

” I am a nurse by training and have wanted to start a doggie daycare center for several years. I went to the Loveland Center for Business Development and from day one; I have learned and gained confidence and know-how on what to do. Having to do the homework and learning how to figure how much things would cost, what would be the cost of rent, where is a good location, the demographics of those who will use my service all made me aware of what is required to open a business. Every time I would get stumped on barriers to opening the business, I called, scheduled an appointment, and found out what potential solutions existed. I would always come out of these “cliff hanging; well, I better not do this” sessions feeling recharged and ready to move on to the next element to success. Once I meet with city officials and the architect (7/19/2010), I will be ready to open in two months. I have done the neighborhood meetings and have no opposition to the business. For 2012, I am projecting employing three to four people with ten to twelve in 2013. Thank you LCBD for your help in laying the foundation for my business and for your continued service in whatever I may need in the future.”

### **Kim Taylor: Remington Technologies**

Impact: Business turn-around, 4 jobs retained, 4 jobs created

“Remington Technologies would like to thank the Loveland Center for Business Development for assistance and ongoing support over the past several years. When we first contacted LCBD, we were having a difficult time managing our opportunities for growth with our cash flow limitations. LCBD has taken a personal interest in our business since that day. We truly appreciate the time and energy spent in connecting us with the resources we needed to address our small business needs. I am grateful that our community has the valuable resources for any small business through LCBD and I remain eternally grateful that we are able to access their assistance at no charge. I feel strongly that programs such as this should remain available for small businesses in our community as I believe that most new businesses face many of the same challenges we have encountered.

As a result of our work with the LCBD, we were connected to the Northern Colorado Economic Development Corporation as well as the USDA. Both of these entities have continued to support our business through a USDA small business loan, educational opportunities and business promotion. Most recently, we applied for, and were awarded a Rural Business Enterprise Grant that was offered jointly through the USDA and the Northern Colorado Economic Development Corporation. This grant was used to contract services for an in-depth business and opportunity analysis which helped us identify market opportunities and the most cost effective ways to pursue them.

At this time, our business has grown from 4 employees to 8 employees and we are hoping to do more for our community through employment opportunities and a commitment to local business. It never ceases to amaze me how we have evolved and grown since the first day I walked into the LCBD and asked for help.

Many, many thanks to both Robin and Mary Ann for everything they do for small businesses in the Loveland community. Keep up the good work! Your efforts are greatly appreciated.”

### **Christopher McLaughlin: The Ten Fold Collective**

**Impact:** Business planning.

“Whether we are researching new markets, trying to figure out how to finance new endeavors, or just needing outside advice, the LCBD team is always available to help and their input is priceless. They are constantly introducing us to public and private resources that we would have otherwise never known about, their inexhaustible energy has provided us with critical insight into our own business, their experience has helped us navigate the complexities of being an employer, and their knowledge of what is happening in the local business community has connected us with what have become critical partners. The LCBD makes us a better business, and I would like to think that we, in turn, contribute to making Loveland a better place.”

### **Anastasia Alexander: The Giggling Greek**

**Impact:** Business expansion, increased sales tax

“When I first moved my business and myself to Loveland I went to visit Robin in the LCBD office to ask for help navigating the financial complexities in the community. We established a great relationship on many levels. With the advent of my new food truck, which Robin was immediately supportive and helped to get the right operating information from the bureaucracy of the City of Loveland. I am able to operate with the knowledge that I am being supported by the LCBD. I am grateful for her commitment to helping small businesses get established and thrive.”

### **Kim K. Fain: Pinot’s Palette**

**Impact:** New business start, projected new jobs, new sales tax source, community integration

“Finding the Loveland Center for Business Development was truly a god-send to me and my partner. Through a time of unemployment and completing my master’s degree, we began exploring small business adventures in franchising. Through the process we ran in too many obstacles and constraints. After learning about LCBD, we met with Robin to discuss our business venture and found her to be a plethora of knowledge and experience. She was very honest, open and up front about our venture and really made us stop and take a close look at what we wanted to do. Being a business student and having many years of business background, I found that small business development is an animal of a different color! With Robins’ advice and regular meetings we are able to be very close to accomplishing our dream of being a small business/franchise owner.

This entity is a true asset for to the City of Loveland. Bringing in business and building community ties is vital and LCBD definitely does both.”

### **Monica Graham : Graham’s Carpet Network**

**Impact:** Business transition

“The Loveland Center for Business Development is an invaluable resource to the Loveland business community being the principal small business resource for all things business. Specifically, Graham’s Carpet Network has found meaningful assistance in the areas of client counseling and from the networking events the LCBD has held. Additionally, Robin Shukle has made herself personally available to support our business during critical junctures both as a counselor and as a steering committee member.”

**Brad Shannon : Shannon Marketing & Communication, LLC**

**Impact:** New business feasibility & analysis.

“The LCBD is an invaluable resource to the Loveland community. They were a tremendous help to me in my research on a business concept I had, and I know of many other local residents who have benefited greatly from Robin's expertise and the resources and events that she and Mary Ann provide.”



## The LCBD Financial Partner Testimonials

July 20, 2012

Mr. Bill Cahill, City Manager  
 City of Loveland  
 500 East Third Street  
 Loveland, CO 80537

Dear Mr. Cahill:

My name is Cindy Catherman and I am a Business Banker at Wells Fargo Bank in Loveland.

I am writing to let you know my thoughts about the LCBD because I am a fan of this organization and of Robin Shukle.

Loveland business owners come to me for bank financing, for a working capital loan or mortgage, for example. I see a significant difference between business owners who have done their homework and worked with Robin, and those who have not. The latter are more often unable to qualify for credit. Robin works with many individuals, providing a valuable service, and after doing so many are able to understand what to do to be able to secure financing from a bank. In this way, businesses are able to actually grow and prosper here in Loveland.

Growing businesses are important to all of us. With the help of the LCBD, I am more likely to be able to assist with needed financing; businesses grow and add to the City's tax base. During these current economic times, small business owners need Robin and the LCBD services more than ever.

Please consider the needs of this valuable Loveland organization. We all will benefit!

Sincerely,

**Cindy Catherman**  
 VP/ Sr. Business Relationship Manager  
 Wells Fargo Bank, NA  
 Larimer County Business Banking  
 3710 N. Grant Ave., Loveland CO 80538

NEW PHONE: 970-203-2543

cell: 970-222-4082  
 fax: 970-203-1995  
 MAC C7509-011

[cynthia.catherman@wellsfargo.com](mailto:cynthia.catherman@wellsfargo.com)

20 July 2012

Dear Mr. Wensing;

I wanted to take this opportunity to express my appreciation for the services provided by Robin & Mary Ann at the LCBD. The Colorado Enterprise Fund provides funding for "unbankable" small businesses in Colorado. We have a high concentration of borrowers in the Loveland area.

The LCBD is critical to our success in Loveland due to the counseling & training provided. These services help prepare applicants for the lending process & provide extended guidance post- loan.

I encourage you to continue to support the LCBD to the greatest possible extent.

Sincerely,

Lewis Hager  
Director of Lending